CAP. 21.

THE LAWS OF ZANZIBAR

CHAPTER 21

SUCCESSION

(PRINCIPAL LEGISLATION)
CHAPTER 21

SUCCESSION

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CHAPTER 21

SUCCESSION

[1ST JANUARY, 1917.]

PART I

PRELIMINARY

1. This Decree may be cited as the Succession Decree.

INTERPRETATION

2. In this Decree, unless there be something repugnant in the subject or context—

“administrator” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor;

“codicil” means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will;

“the court” means the High Court;

“demonstrative legacy” means a legacy directed to be paid out of specified property;

“executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided;

“exempted person” means a person exempted from the provisions of Parts II to XXVIII under the provisions of section 6;

“minor” means any person subject to the Majority Decree, who has not attained his majority within the meaning of that Decree and any other person who has not completed the age of eighteen years; and “minority” means the status of any such person;

“probate” means the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration of the estate of the testator;

“specific legacy” means a legacy of specified property;

“will” means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.

APPLICATION

3. Except as provided by this Decree or by any other law for the time being in force, the rules herein contained shall constitute the law of Zanzibar applicable to all cases of intestate or testamentary succession.
4.—(1) The provisions of this Decree shall not apply to any will made, or to any intestacy occurring, before the 1st January, 1866.

(2) Nothing contained in this Decree shall be taken to supersede the rights, duties, and privileges of the Administrator-General under the Administrator-General's Decree.

5.—(1) The provisions of this Decree shall apply to Muslims and exempted persons subject to exceptions, adaptations, and modifications set out in the First Schedule.

(2) The provisions of this Decree shall apply to Hindus, and Buddhists subject to the exceptions, adaptations, and modifications set out in the Second Schedule.

(3) The provisions of this Decree shall apply to Parsis subject to the exceptions, adaptations and modifications set out in the Third Schedule.

(4) The provisions of this Decree shall apply with reference to a person in respect of whom an adoption order has been made under the Adoption of Children Decree, subject to the exceptions, adaptations and modifications set out in the Fourth Schedule.

6.—(1) A Secretary of State shall from time to time have power, by an order, either retrospectively from the passing of this Decree or prospectively, to exempt from the operation of all or any of the provisions contained in Parts II to XXVIII the members of any race, sect or tribe in Zanzibar, or any part of such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

(2) A Secretary of State shall also have power from time to time to revoke such order, but not so that the revocation shall have any retrospective effect.

(3) All orders and revocations made under this section shall be published in the Gazette.

PART II

OF DOMICILE

7.—(1) Succession to the immovable property in Zanzibar of a person deceased is regulated by the law of Zanzibar, wherever he may have had his domicile at the time of his death.

(2) Succession to the movable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

8. A person can only have one domicile for the purpose of succession to his movable property.
9.—(1) The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

(2) The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

(3) The domicile of origin prevails until a new domicile has been acquired.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin:

Provided that a man shall not be considered as having taken up his fixed habitation in Zanzibar merely by reason of his residing there in Her Majesty's civil or military service, or in the service of the Zanzibar Government, or in the exercise of any profession or calling.

11. Any person may acquire a domicile in Zanzibar by making and depositing at the British Residency a declaration in writing under his hand of his desire to acquire such domicile:

Provided that he has been resident in Zanzibar for one year immediately preceding the time of his making such declaration.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as part of his family, or as a servant.

13. A new domicile continues until the former domicile has been resumed, or another has been acquired.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin:

Provided that the domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty or of the Zanzibar Government, or has set up, with the consent of the parent, in any distinct business.

15.—(1) By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

(2) The wife's domicile during the marriage follows the domicile of her husband:

Provided that the wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent court.
16. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

17. A person of unsound mind cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

18. If a man dies leaving movable property in Zanzibar, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of Zanzibar.

PART III
OF CONSANGUINITY

19. Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

20.—(1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man, his son, grandson, great-grandson, and so downwards in the direct descending line.

(2) Every generation constitutes a degree, either ascending or descending.

(3) A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third.

21.—(1) Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

(2) For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased it is proper to reckon upwards from the person deceased to the common stock and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

22. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.
23.—(1) In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

(2) The person whose relatives are to be reckoned, and his cousin-german, or, first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor, the grandfather; and from him one of descent to the uncle, and another to the cousin-german; making in all four degrees.

(3) A grandson of the brother and a son of the uncle, i.e., a great-nephew and a cousin-german, are in equal degree, being each four degrees removed.

(4) A grandson of a cousin-german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.
TABLE OF CONSANGUINITY.

The person whose relatives are to be reckoned

Son.

Grandson.

Great Grandson.

Great Grandfather.

Great Grandfather's Father.

Great Grandfather.

Great Uncle.

Great Uncle's Son.

Uncle.

Brother.

Nephew.

Son of the Nephew or Brother's Grandson.

Son of the Cousin-german.

Second Cousin.

Cousin-german.

Great Uncle.

2

1

1

The person whose relatives are to be reckoned
PART IV
OF INTESTACY

24.—(1) A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

(2) Subject to the provisions of section 27, such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

(3) Notwithstanding anything hereinbefore contained, the widow is not entitled to the provision hereby made for her in this section or in section 25 or 27, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

25.—(1) Where the intestate has left a widow, if he has also left any lineal descendants one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained.

(2) If he has left no lineal descendant, but has left persons who are of kindred to him, one half of his property shall belong to his widow, and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained.

(3) If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

26. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: and, if he has left none who are of kindred to him, it shall go to the Crown if he was a British subject, and to the Zanzibar Government if he was a subject of the Sultan of Zanzibar.

27.—(1) The property of every man who dies intestate leaving a widow but no issue, shall, in all cases where the net value of such property shall not exceed ten thousand shillings, belong to his widow absolutely and exclusively.

(2) Where the net value of the property in the preceding subsection mentioned exceeds the sum of ten thousand shillings, the widow of such intestate shall be entitled to ten thousand shillings being part thereof absolutely and exclusively, and shall have a charge on the property for such ten thousand shillings with interest thereon from the date of the death of the intestate at four per centum per annum until payment.

(3) As between the real and personal estate of such intestate, such charge shall be borne and paid in proportion to the value of the real and personal estates respectively.
(4) The provision for the widow intended to be made by this section shall be in addition and without prejudice to her interest and share in the residue of the property of such intestate remaining after payment of the sum of ten thousand shillings in the same way as if such residue had been the whole of such intestate's property and this Decree had not been passed.

PART V

OF THE DISTRIBUTION OF AN INTESTATE'S PROPERTY

(a) Where he has left lineal Descendants

28. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as set out in sections 29 to 32 (both inclusive).

29. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

30. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there be only one, or shall be equally divided among all his surviving grandchildren.

31. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.

32.—(1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

(2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease.

(3) One of such shares shall be allotted in respect of each of such deceased lineal descendants.
(4) The share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

(b) *Where the Intestate has left no lineal Descendants*

33. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as set out in sections 34 to 41 (both inclusive).

34. If the intestate's father be living he shall succeed to the property.

35. If the intestate's father is dead, but the intestate's mother is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

36. If the intestate's father is dead, but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

37. If the intestate's father is dead but the intestate's mother is living, and the brothers and sisters are all dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.

38. If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

39. Where the intestate has left neither lineal descendant, nor father, nor mother, the property is divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.
Where intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

41. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child of such person, no money or other property which the intestate may during his life have paid, given or settled to, or for the advancement of the child by whom or by whose descendant the claim is made, shall be taken into account in estimating such distributive share.

PART VI

OF THE EFFECT OF MARRIAGE AND MARRIAGE-SETTLEMENTS ON PROPERTY

42. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband’s property if he die intestate.

43.—(1) If a person whose domicile is not in Zanzibar marries in Zanzibar a person whose domicile is in Zanzibar, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in Zanzibar at the time of the marriage.

(2) No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried:

Provided that the provisions of this subsection shall not apply to any marriage contracted before the 1st January, 1866.

44. The property of a minor may be settled in contemplation of marriage provided the settlement be made by the minor with the approbation of the minor’s father, or, if he be dead or absent from Zanzibar, with the approbation of the court.

PART VII

OF WILLS AND CODICILS

45.—(1) Every person of sound mind and not a minor may dispose of his property by will.

(2) A married woman may dispose by will of any property which she could alienate by her own act during her life.

(3) Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

(4) One who is ordinarily of unsound mind may make a will during an interval in which he is of sound mind.
(5) No person can make a will while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

46. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during minority.

47. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

48. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

PART VIII
OF THE EXECUTION OF UNPRIVILEGED WILLS

49.—(1) Every testator, not being a soldier employed in an expedition, or engaged in actual warfare or an airman so employed or engaged, or a mariner at sea, must execute his will according to the rules herein-after set out.

(2) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(3) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(4) The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

50. If a testator, in a will or codicil duly attested, refers to any other document then actually written as expressing any part of his intentions, such document shall be considered as forming a part of the will or codicil in which it is referred to.

PART IX
OF PRIVILEGED WILLS

51. Any soldier being employed in an expedition, or engaged in actual warfare or an airman so employed or engaged, or any mariner being at sea may, if he has completed the age of eighteen years, dispose of his property by a will made as is mentioned in section 52 (hereinafter called “a privileged will”).
52.—(1) Privileged wills may be in writing, or may be made by word of mouth.

(2) The execution of them shall be governed by the following rules—

(a) The will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

(b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

(c) If the instrument purporting to be a will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his will, if it be shown that it was written by the testator’s directions, or that he recognised it as his will.

(d) If it appear on the face of the instrument that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

(e) If the soldier, airman or mariner has written instructions for the preparation of his will, but has died before it could be prepared and executed, such instructions shall be considered to constitute his will.

(f) If the soldier, airman or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his will, although they may not have been reduced into writing in his presence, nor read over to him.

(g) Such soldier, airman or mariner as aforesaid may make a will by word of mouth by declaring his intentions before two witnesses present at the same time.

(h) A will made by word of mouth shall be null at the expiration of one month after the testator has ceased to be entitled to make a privileged will.

PART X

OF THE ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS

53. A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment to any person attesting it, or to his or her wife or husband:

Provided that—

(1) the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them; and

(2) a legatee under a will shall not lose his legacy by attesting a codicil which confirms the will.
54. No person, by reason of interest in, or of his being an executor of, a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

55.-(1) Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

(2) Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

56. No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the 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 the same.

57. No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect except so far as the words or meaning of the will have been thereby rendered illegible or undiscernible, unless such alteration is executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, 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 on 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.

58.-(1) A privileged will or codicil may be revoked by the testator by an unprivileged will or codicil, or by any act expressing an intention to revoke it and accompanied with such formalities as would be sufficient to give validity to a privileged will, or by the 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 the same.

(2) In order to effect the revocation of a privileged will or codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged will.

59.-(1) No unprivileged will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same.
(2) When any will or codicil, which has been partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

PART XI

OF THE CONSTRUCTION OF WILLS

Wording will.

60. It is not necessary that any technical words or terms of art shall be used in a will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

Inquiries to determine questions as to object or subject of will.

61. For the purpose of determining questions as to what person or what property is denoted by any words used in a will, a court must inquire into every material fact relating to the persons who claim to be interested under such will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Misnomer or misdescription of object.

62.—(1) Where the words used in the will to designate or describe a legatee or a class of legatees sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

(2) A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

When words may be supplied.

63. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Rejection of erroneous particulars in description of subject.

64. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

When part of description may not be rejected as erroneous.

65.—(1) If the will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

(2) In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 64 are to be considered as struck out of the will.
66. Where the words of the will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

67. Where there is an ambiguity or deficiency on the face of the will no extrinsic evidence as to the intentions of the testator shall be admitted.

68. The meaning of any clause in a will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a codicil is to be considered as part of the will.

69. General words may be understood in a restricted sense where it may be collected from the will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the will that the testator meant to use them in such wider sense.

70. Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

71. No part of a will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

72. If the same words occur in different parts of the same will, they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

73. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

74. Where two clauses or gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

75. A will or bequest not expressive of any definite intention is void for uncertainty.

76. The description contained in a will of property the subject of gift shall, unless a contrary intention appear by the will, be deemed to refer to and comprise the property answering that description at the death of the testator.
77.—(1) Unless a contrary intention appears by the will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

(2) A bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by will to any object he may think proper, and shall operate as an execution of such power.

78. Where property is bequeathed to or for the benefit of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint, and the will does not provide for the event of no appointment being made; if the power given by the will be not exercised, the property belongs to all the objects of the power in equal shares.

79. Where a bequest is made to the “heirs” or “right heirs,” or “relations,” or “nearest relations” or “family” or “kindred” or “nearest of kin,” or “next-of-kin” of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

80. When a bequest is made to the “representatives,” or “legal representatives” or “personal representatives,” or “executors or administrators” of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it.

81. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the will that only a restricted interest was intended for him.

82. Where property is bequeathed to a person, with a bequest in the alternative to another person or to a class of persons; if a contrary intention does not appear by the will, the legatee first named shall be entitled to the legacy if he be alive at the time when it takes effect; but if he be then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

83. Where property is bequeathed to a person, and words are added which describe a class of persons but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the will.
84. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in the ordinary sense applicable shall take the legacy.

85.—(1) In the construction of a will, the words and expressions hereinafter appearing in this section shall (save as otherwise provided in the Third and Fourth Schedules) have the following meanings respectively assigned to them—
(a) "children" in a will applies only to lineal descendants in the first degree;
(b) "grand-children" applies only to lineal descendants in the second degree of the person whose "children" or "grand-children", are spoken of;
(c) "nephews" and "nieces" apply only to children of brothers or sisters;
(d) "cousins," or "first cousins," or "cousins-german," apply only to children of brothers or of sisters of the father or mother of the person whose "cousins," or "first cousins," or "cousins-german," are spoken of;
(e) "first cousins once removed" apply only to children of cousins-german, or to cousins-german of a parent of the person whose "first cousins once removed" are spoken of;
(f) "second cousins" apply only to grand-children of brothers or of sisters of the grandfather or grandmother of the person whose "second cousins" are spoken of;
(g) "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or "descendants" are spoken of;

(2) Words expressive of collateral relationship apply alike to relatives of full and of half-blood.

(3) All words expressive of relationship apply to a child in the womb who is afterwards born alive.

(4) In the absence of any intimation to the contrary in the will, the term "child," "son" or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or, where there is no such legitimate relative, a person who has acquired at the date of the will, the reputation of being such relative.

86.—(1) Where a will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the will to show what he intended, the following rules shall prevail in determining the construction to be put upon the will—
(a) if the same specific thing is bequeathed twice to the same legatee in the same will, or in the will and again in the codicil, he is entitled to receive that specific thing only;
Succession

(b) where one and the same will or one and the same codicil purports to make, in two places, a bequest to the same person of the same quantity or amount of anything, he shall be entitled to one such legacy only;

(c) where two legacies, of unequal amount, are given to the same person in the same will, or in the same codicil, the legatee is entitled to both;

(d) where two legacies, whether equal or unequal in amount, are given to the same legatee one by a will and the other by a codicil, or each by a different codicil, the legatee is entitled to both legacies.

(2) For the purposes of the rules set out in subsection (1) "will" does not include a codicil.

Constitution of residuary legatee.

87. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Property to which residuary legatee entitled.

88. Under a residuary bequest, the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Time of vesting legacy in general terms.

89. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and, if he dies without having received it, it shall pass to his representatives.

In what case legacy lapses.

90.—(1) If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the will that the testator intended that it should go to some other person.

(2) In order to entitle the representatives of the legatee to receive the legacy it must be proved that he survived the testator.

Legacy does not lapse if one of two joint legatees die before testator.

91. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Effect of words showing testator's intention to give distinct shares.

92. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

When lapsed share goes as undisposed of.

93. Where the share that lapses is a part of the general residue bequeathed by the will, that share shall go as undisposed of.
94. Where a bequest is made to any child or other lineal descendant of the testator, and the legatee dies in the lifetime of the testator, but any lineal descendant of his survives the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

95. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator’s lifetime, of the persons to whom the bequest is made.

96. Where a bequest is made simply to a described class of persons the thing bequeathed shall go only to such as shall be alive at the testator’s death:

Provided that if property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

PART XII
OF VOID BEQUESTS

97. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator’s death who answers the description, the bequest is void:

Provided that if property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or, if he be dead, to his representatives.

98. Where a bequest is made to a person not in existence at the time of the testator’s death, subject to a prior bequest contained in the will, the later bequest shall be void, unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

99. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator’s decease, and the minority of some persons who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.
100. If a bequest is made to a class of persons with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections, or either of them, such bequest shall be wholly void.

101. Where a bequest is void by reasons of any of the rules contained in the three last preceding sections, any bequest contained in the same will, and intended to take effect after or upon failure of such prior bequest, is also void.

102. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed:

Provided that where the property is immovable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator’s death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

103. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons, or until such place is provided at the British Residency or Her Britannic Majesty’s Court.

PART XIII

OF THE VESTING OF LEGACIES

104.—(1) Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator’s death, and shall pass to the legatee’s representatives if he dies before that time and without having received the legacy.

(2) In such cases the legacy is from the testator’s death said to be vested in interest.

(3) An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.
105. — (1) A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.

(2) A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible.

(3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent:

Provided that where a fund is bequeathed to any person upon his attaining a particular age, and the will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit, the bequest of the fund is not contingent.

106. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

PART XIV
OF ONEROUS BEQUESTS

107. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

108. Where a will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

PART XV
OF CONTINGENT BEQUESTS

109. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

110. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the will.
PART XVI

OF CONDITIONAL BEQUESTS

111. A bequest upon an impossible condition is void.

112. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

113. Where a will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed the condition shall be considered to have been fulfilled if it has been substantially complied with.

114. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail, the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

115. Where the will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect, unless the prior bequest fails in that particular manner.

116.—(1) A bequest may be made to any persons with the condition superadded that in case a specified uncertain event shall happen the thing bequeathed shall go to another person, or that in case a specified uncertain event shall not happen the thing bequeathed shall go over to another person.

(2) In each case the ulterior bequest is subject to the rules contained in sections 105, 106, 107, 108, 109, 110, 111, 112, 114 and 115.

117. An ulterior bequest of the kind contemplated by the last preceding section cannot take effect, unless the condition is strictly fulfilled.

118. If the ulterior bequest be not valid, the original bequest is not affected by it.

119. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.
120. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest as contemplated by section 105.

121. Where a bequest is made with a condition superadded that, unless the legatee shall perform a certain act, the subject matter of the bequest shall go to another person, or the bequest shall cease to have effect, but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

122. Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

**PART XVII**

**OF BEQUESTS WITH DIRECTIONS AS TO APPLICATION OR ENJOYMENT**

123. Where a fund is bequeathed absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction.

124. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee the fund belongs to him as if the will had contained no such direction.

125. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund or so much of it as has not been exhausted upon the objects contemplated by the will, remains a part of the estate of the testator.
PART XVIII

OF BEQUESTS TO AN EXECUTOR

126. If a legacy is bequeathed to a person who is named an executor of the will, he shall not take the legacy unless he proves the will or otherwise manifests an intention to act as executor.

PART XIX

OF SPECIFIC LEGACIES

127. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property the legacy is said to be specific.

128. When a certain sum is bequeathed, the legacy is not specific merely because the stock, funds or securities in which it is invested are described in the will.

129. Where a bequest is made in general terms, of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his will, possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

130. A money legacy is not specific merely because the will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

131. Where a will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed, the articles enumerated shall not be deemed to be specifically bequeathed.

132. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.
133. Where property comprised in a bequest to two or more persons in succession is not specifically bequeathed, it shall, in the absence of any direction to the contrary, be sold, and the proceeds of the sale shall be invested in such securities as the court may, by any general rules to be made from time to time, authorise or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the will.

134. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

PART XX

OF DEMONSTRATIVE LEGACIES

135.—(1) Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

(2) The distinction between a specific legacy and a demonstrative legacy consists in this, that—

(a) where specified property is given to the legatee, the legacy is specific;

(b) where the legacy is directed to be paid out of specified property, it is demonstrative.

136. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

PART XXI

OF ADEMPTION OF LEGACIES

137. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is it cannot take effect, by reason of the subject-matter having been withdrawn from the operation of the will.

138. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.
Ademption of specific bequest or right to receive something from third party. Ademption pro tanto by testator's receipt of part of entire thing specifically bequeathed. Ademption pro tanto by testator's receipt of portion of entire fund of which portion has been specifically bequeathed. Order of payment where portion of fund specifically bequeathed to one legatee, and a legacy charged on the same fund to another, and, testator having received portion of that fund, remainder insufficient to pay both legacies. Ademption where stock, specifically bequeathed, does not exist at testator's death. Ademption pro tanto where stock, specifically bequeathed, exists in part only at testator's death.

139. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

140. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

141. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

142. Where a portion of a fund is specifically bequeathed to one legatee, and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund, and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy, the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

143. Where stock which has been specifically bequeathed does not exist at the testator's death, the legacy is adeemed.

144. Where stock which has been specifically bequeathed does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.
145. A specific bequest of goods under a description connecting them with a certain place is not deemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

146. The removal of the thing bequeathed from the place in which it is stated in the will to be situated does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

147. Where the thing bequeathed is not the right to receive something of value from a third person but the money or other commodity which shall be received from the third person by the testator himself, or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property, the legacy is deemed.

148. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy is not deemed by reason of such change.

149. Where a thing specifically bequeathed undergoes a change between the date of the will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not deemed.

150. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not deemed.

151. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not deemed.
PART XXII

OF THE PAYMENT OF LIABILITIES IN RESPECT OF THE SUBJECT OF A BEQUEST

152.—(1) Where property specifically bequeathed is subject at the death of the testator to any pledge, lien or incumbrance, created by the testator himself or by any person under whom he claims, then unless a contrary intention appears by the will, the legatee, if he accepts the bequest, shall accept it subject to such pledge or incumbrance, and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance.

(2) A contrary intention shall not be inferred from any direction which the will may contain for the payment of the testator's debts generally.

(3) A periodical payment in the nature of land-revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

153. Where anything is to be done to complete the testator's title to the thing bequeathed, it is to be done at the cost of the testator's estate.

154. Where there is a bequest of any interest in immovable property in respect of which payment in the nature of land-revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

155.—(1) In the absence of any direction in the will, where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the testator's estate and the legatee, be borne by such estate.

(2) If any call or other payment shall, after the testator's death, become due in respect of such stock, the same shall, as between the testator's estate and the legatee, be borne by the legatee, if he accept the bequest.

PART XXIII

OF BEQUESTS OF THINGS DESCRIBED IN GENERAL TERMS

156. If there be a bequest of something described in general terms, the executor must purchase for the legatee what may reasonably be considered to answer the description.
PART XXIV

OF BEQUESTS OF THE INTEREST OR PRODUCE OF A FUND

157. Where the interest or produce of a fund is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

PART XXV

OF BEQUESTS OF ANNUITIES

158. Where an annuity is created by will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the will. This rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

159. Where the will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of any annuity for any person, on the testator's death the legacy vests in interest in the legatee, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the will.

160. Where an annuity is bequeathed, but the assets of the testator are not sufficient to pay all the legacies given by the will the annuity shall abate in the same proportion as the other pecuniary legacies given by the will.

161. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

PART XXVI

OF LEGACIES TO CREDITORS AND PORTIONERS

162. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.
163. Where a parent, who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

164. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

PART XXVII

OF ELECTION

165. Where a man, by his will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the will.

166.—(1) The interest so relinquished shall devolve as if it had not been disposed of by the will in favour of the legatee, subject nevertheless, to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the will.

(2) The provisions of subsection (1) shall apply whether the testator does or does not believe that which he professes to dispose of by his will to be his own.

167. A bequest for a man's benefit is, for the purpose of election, the same thing as a bequest made to himself.

168. A person taking no benefit directly under the will, but deriving a benefit under it indirectly, is not put to his election.

169. A person who in his individual capacity takes a benefit under the will may in another character elect to take in opposition to the will.

170. Where a particular gift is expressed in the will to be in lieu of something belonging to the legatee which is also in terms disposed of by the will, the legatee must relinquish the particular gift, if he claims that thing, but (notwithstanding anything contained in sections 165 to 169 (both inclusive)) he is not bound to relinquish any other benefit given to him by the will.
171. Acceptance of a benefit given by the will constitutes an election by the legatee to take under the will, if he had knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

172. Such knowledge or waiver of enquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the will without doing any act to express dissent.

173. Such knowledge or waiver of enquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest in the same condition as if such act had not been done.

174.—(1) If the legatee shall not, within one year after the death of the testator, signify to the testator’s representatives his intention to confirm or to dissent from the will, the representatives shall, upon the expiration of that period, require him to make his election.

(2) If he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the will.

175. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

PART XXVIII

OF GIFTS IN CONTEMPLATION OF DEATH

176.—(1) A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by will.

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

(3) Such a gift may be resumed by the giver.

(4) It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.
PART XXIX

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION

177. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

178. When a will has been proved and deposited in a court of competent jurisdiction situated beyond the limits of the jurisdiction of the court whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

179. Probate can be granted only to an executor appointed by the will.

180. The appointment may be expressed or by necessary implication.

181. Probate cannot be granted to any person who is a minor or is of unsound mind.

182. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

183.—(1) If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

(2) If different executors are appointed by the codicil, the probate of the will must be revoked and a new probate granted of the will and codicil together.

184. When probate has been granted to several executors and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

185. No right as executor or legatee can be established in any court of justice, unless a court of competent jurisdiction in Zanzibar has granted probate of the will under which the right is claimed, or has granted letters of administration with the will, or with a copy of an authenticated copy of the will, annexed.
186. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

187. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

188. No right to any part of the property of a person who has died intestate can be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.

189. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

190. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate’s estate.

191. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship:

Provided that, when one or more of several executors have proved a will, the court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

192. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

193. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

194. A universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered—

(a) when the deceased has made a will, but has not appointed an executor, or

(b) when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

(c) when the executor dies after having proved the will, but before he has administered all the estate of the deceased.
Right to administration of representative of deceased residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

Citation before grant of administration to legatee other than universal or residuary.

To whom administration may be granted.

If there is a widow.

Association with widow in administration.

Administration where no widow or widow excluded.

Title of kindred to administration.

Right of widower to administration of wife’s estate.

Grant of administration to creditor.

195. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

196. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

197. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next of kin to accept or refuse letters of administration.

198. Except as otherwise provided by this Decree, when the deceased has died intestate, those who are connected with him, either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules hereinafter stated—

(a) If the deceased has left a widow, administration shall be granted to the widow, unless the court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

(b) If the Judge think proper, he may associate any person or persons with the widow in the administration who would be entitled solely to the administration if there were no widow.

(c) If there be no widow, or if the court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of an intestate’s estate:

Provided that, when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

(d) Those who stand in equal degree of kindred to the deceased are equally entitled to administration.

(e) The husband surviving his wife has the same right of administration of her estate as the widow has in respect of the estate of her husband.

(f) When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.
(g) Where the deceased has left property in Zanzibar, letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of Zanzibar:

Provided always that when the peculiar circumstances of the case appear to the court so to require, for reasons recorded in the proceedings, the court, may, if it think fit, of its own motion or otherwise grant letters of administration to the Administrator General or to any other person even though there are persons who, in the ordinary course would be legally entitled to administration.

PART XXX

OF LIMITED GRANTS

A. Grants limited in duration

199. When the will has been lost or mislaid since the testator’s death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft limited until the original or a properly authenticated copy of it be produced.

200. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents if they can be established by evidence.

201. When the will is in the possession of a person residing out of Zanzibar, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

202. When no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will, or an authenticated copy of it, be produced.

B. Grants for the use and benefit of others having right

203. When any executor is absent from Zanzibar, and there is no executor within Zanzibar willing to act, letters of administration, with the will annexed, may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.
204. When any person to whom, if present, letters of administration, with the will annexed, might be granted, is absent from Zanzibar letters of administration, with the will annexed, may be granted to his attorney, limited as above mentioned.

205. When a person entitled to administration in case of intestacy is absent from Zanzibar, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

206. When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of such minor or to such other person as the court shall think fit until the minor shall have completed the age of eighteen years, at which period, and not before, probate of the will shall be granted to him.

207. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of eighteen years.

208. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rules for the distribution of intestates’ estates be a minor or person of unsound mind, letters of administration, with or without the will annexed (as the case may be) may be granted to the person to whom the care of his estate has been committed by competent authority, or to such other person as the court may think fit to appoint, for the use and benefit of the minor or person of unsound mind until he attains majority or becomes of sound mind, as the case may be.

209. Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the court and shall act under its direction.

C. For Special Purposes

210. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.
211. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

212. When a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

213. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

214. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from Zanzibar, it shall be lawful for the court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

215. In any case in which it may appear necessary for preserving the property of a deceased person, the court may grant to any person whom it may think fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the court.

216.—(1) When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor, at the time of the death of such person, is resident out of Zanzibar, and it shall appear to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof, other than the person who, under ordinary circumstances, would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator.

(2) In every such case letters of administration may be limited or not as the Judge shall think fit.
D. Grants with exception

217. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

218. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

E. Grants of the rest

219. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased’s estate.

F. Grant of effects unadministered

220. If the executor to whom probate has been granted has died, leaving a part of the testator’s estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

221. In granting letters of administration of an estate not fully administered, the court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

222. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased’s estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

G. Alteration in grants.

223. Errors in names and descriptions, or in setting forth the time and place of the deceased’s death or the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

224. If after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.
H. Revocation of grants

225.—(1) The grant of probate or letters of administration may be revoked or annulled for just cause.

(2) Just cause is that—

(a) the proceedings to obtain the grant were defective in substance;

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

(d) the grant has become useless and inoperative through circumstances;

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Part XXXIV or has exhibited under that Part an inventory or account which is untrue in a material respect.

PART XXXI

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION

226. The court shall have full jurisdiction in granting and revoking probates and letters of administration in all cases within the Protectorate.

227.—(1) The District Registrar in Pemba may, if so empowered by the principal Judge of the High Court, exercise in cases where there is no contention all the powers hereby vested in the court in granting probates and letters of administration where the net value of the estate is estimated not to exceed twenty two thousand five hundred shillings:

Provided that in any case where it appears doubtful to the District Registrar whether probate or letters of administration should or should not be granted he shall refer the matter to the Registrar who shall obtain the Judge's directions thereon.

(2) "Contention" means the appearance of anyone in person or by his recognised agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

228. Where application is made to the District Registrar for the grant of probate or letters of administration notice of such application shall forthwith be sent by the District Registrar to the Registrar of the High Court; such notice shall specify the name of the applicant, the name of the testator or intestate, his place of abode and such other particulars as may be prescribed.
229. The Judge shall have the like powers and authority in relation to the granting of probate and letters of administration and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his court.

230.—(1) The Judge may order any person to produce and bring into court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person.

(2) If it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the court may direct him to attend for the purpose of being examined respecting the same, and he shall be bound to answer such questions as may be put to him by the court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Penal Decree in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default.

(3) The costs of the proceeding shall be in the discretion of the Judge.

231. The proceedings of the court in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the law relating to civil procedure.

232. Until probate be granted of the will of a deceased person, or an administrator of his estate be constituted, the Judge is authorised and required to interfere for the protection of such property at the instance of any person claiming to be interested therein, and in all other cases where the Judge considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

233.—(1) Probate or letters of administration shall have effect over all the property, movable or immovable, of the deceased throughout Zanzibar, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him.

(2) Probate or letters of administration shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

234. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the jurisdiction of the court at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the court.
235.—(1) Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English with the will, or, in the cases mentioned in sections 199, 200 and 201, a copy, draft or statement of the contents thereof, annexed, and stating—

(a) the time of the testator’s death,
(b) that the writing annexed is his last will and testament, or as the case may be,
(c) that it was duly executed,
(d) the amount of assets which are likely to come to the petitioner’s hands; and,
(e) where the application is for probate, that the petitioner is the executor named in the will.

(2) In addition to these particulars, the petition shall further state that the deceased at the time of his death had a fixed place of abode or had some property, movable or immovable, within the jurisdiction of the court.

236. In cases wherein the will, copy or draft is written in any language other than English there shall be a translation thereof annexed to the petition certified by an official of the court to be a true and accurate translation.

237.—(1) Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating—

(a) the time and place of the deceased’s death,
(b) the family or other relatives of the deceased, and their respective residences,
(c) the right in which the petitioner claims,
(d) the amount of assets which are likely to come to the petitioner’s hands.

(2) In addition to these particulars, the petition shall further state that the deceased at the time of his death had a fixed place of abode or had some property, movable or immovable, within the jurisdiction of the court.

238. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect—

“I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

239. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following—
“I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

240. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

241.—(1) In all cases it shall be lawful for the Judge, if he thinks fit—

(a) to examine the petitioner in person upon oath,
(b) to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and
(c) to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the court-house, and otherwise published or made known in such manner as the Judge issuing the same may direct.

242.—(1) Caveats against the grant of probate or letters of administration may be lodged with the Judge or the District Registrar; and immediately upon a caveat being lodged with the District Registrar he shall send the caveat together with any application or other papers relating thereto to the Registrar who shall submit the same to the Judge for his directions.

(2) Such caveat shall be in Form 1 in the Fifth Schedule or a form to the like effect.

243. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered, until after such notice to the person by whom the same has been entered as the court shall think reasonable.

244. Whenever it appears to the Judge or District Registrar that probate of a will should be granted, he shall grant the same under the seal of the court in manner set out in Form 2 in the Fifth Schedule.

245. Whenever it appears to the Judge or District Registrar that letters of administration of the estate of a deceased person, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of the court in manner set out in Form 3 in the Fifth Schedule.
246. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall be liable to give a bond to the Judge in double the value of the property for which the grant is to be made, to ensure to the benefit of the Judge for the time being, with one or more sureties, engaging for the due collection, getting in, and administering the estate of the deceased:

Provided that the Judge—

(a) may for any sufficient reason increase or decrease the number of sureties, or dispense with them;

(b) in addition to or in substitution for any of the last mentioned powers, may reduce or dispense with the amount of the bond; and

(c) shall not require sureties to an administration bond given by a Consular Officer upon grant of administration by virtue of section 4 of the Consular Conventions Decree.

247. The court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into court, or otherwise as the court may think fit, assign the the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

248. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator's or intestate's death.

249. No grant of probate or letters of administration shall be made unless the certificate required by section 33 of the Estate Duty Decree is produced before the court.

250.—(1) Until a public registry for wills is established, the Judge or District Registrar shall file and preserve among the records of the court all original wills of which probate or letters of administration with the will annexed may be granted by him.

(2) The Chief Justice shall make Regulations for the preservation and inspection of wills so filed as aforesaid.

251. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until such probate or letters of administration shall have been recalled or revoked.
252. In any case before the Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a suit, according to the provisions of the law relating to civil procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

253.-(1) Where any probate is, or letters of administration are, revoked, all payments bona fide made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same.

(2) The executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him, which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

254. Notwithstanding anything hereinbefore contained, it shall be in the discretion of the court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Decree.

255. Subject to such conditions and limitations as may be prescribed, all decisions of the court under this Part may be appealed from, as if they were decrees or orders made by the Court in the exercise of its original civil jurisdiction.

256.-(1) Subject to such conditions and limitations as may be prescribed, a Judge of the High Court may reserve for the consideration of the Court of Appeal, on a case to be stated by him, any question of law which may arise before him in proceedings under this Part, and may give any decision, subject to the opinion of the Court of Appeal, and the Court of Appeal shall have power to hear and determine every such question.

(2) Such power of reservation shall be in addition and without prejudice to any right of appeal conferred by section 255.

(3) In this and the preceding section—
"decision" includes a judgment, decree, order, and a grant or revocation of probate or letters of administration as well as a refusal by the court to grant or revoke probate or letters of administration;
"prescribed" means prescribed by Rules of Court made under Article 40 of the Zanzibar Order in Council, 1924, or of any other Order of Her Majesty in Council relating to rules of court modifying, amending or replacing the said Article.
PART XXXII

OF EXECUTORS OF THEIR OWN WRONG

257.—(1) Except in the cases mentioned in subsection (2) a person who intermeddles with the estate of a deceased person, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

(2) The provisions of subsection (1) shall not apply to the following cases, namely:

(a) Intermending with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

(b) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

258. When a person has so acted as to become an executor of his own wrong, he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

PART XXXIII

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR

259. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

260. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

261.—(1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 177.

(2) The power of an executor to dispose of immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.
(3) An administrator may not, without the previous permission of the court by which the letters of administration were granted—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him under section 177, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of subsection (2) or subsection (3), as the case may be, is voidable at the instance of any other person interested in the property.

262. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

263. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

264. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

265. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

266. An administrator during minority has all the powers of an ordinary administrator.

267. When probate or letters of administration shall have been granted to a married woman she has all the powers of an ordinary executor or administrator.

PART XXXIV

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR

268. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

269.—(1) An executor or administrator, shall, when required by the court so to do, exhibit in the court an inventory and account containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character, and further shall,
within one year from the date of the grant or within such further time as the court may appoint, exhibit an account of the estate, showing the assets which have come into his hands and the manner in which they have been applied or disposed of.

(2) The Chief Justice may prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 116 of the Penal Decree.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 93 of the Penal Decree.

270. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

271. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

272. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

273. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artisan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

274.—(1) Save as aforesaid, no creditor is to have a right of priority over another.

(2) The executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

275.—(1) If the domicile of the deceased was not in Zanzibar the application of his movable property to the payment of his debts is to be regulated by the law of Zanzibar.
Creditor paid in part under this section to bring payment into account before sharing in proceeds of immovable property.

Debts to be paid before legacies.

Executor or administrator not bound to pay legacies without indemnity.

Abatement of general legacies.

Executor not to pay one legatee in preference to another.

Non-abatement of specific legacy when assets sufficient to pay debts.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

Rateable abatement of specific legacies.

Legacies treated as general for purpose of abatement.

(2) No creditor who has received payment of a part of his debt by virtue of subsection (1) shall be entitled to share in the proceeds of the immovable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

276. Debts of every description must be paid before any legacy.

277. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

278.—(1) If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions.

(2) In the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

279. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

280. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

281. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

282. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.
PART XXXV

OF THE EXECUTOR’S ASSENT TO A LEGACY

283. In this Part “executor” includes an administrator with the will annexed.

284. The assent of the executor is necessary to complete a legatee’s title to his legacy.

285.--(1) The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

(2) This assent may be verbal, and it may be either express or implied from the conduct of the executor.

286. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

287.--(1) When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

(2) Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

288. The assent of the executor to a legacy gives effect to it from the death of the testator.

289. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

PART XXXVI

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES

290. In this Part “executor” includes an administrator with the will annexed.

291. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator’s death, and the first payment shall be made at the expiration of a year next after that event.

292. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.
293.-(1) Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorises the first payment to be made.

(2) If the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

PART XXXVII

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES

294. In this Part "executor" includes an administrator with the will annexed.

295. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the court may, by any general rule to be made from time to time, authorise or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

296.—(1) Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

(2) The intermediate interest shall form part of the residue of the testator's estate.

297.—(1) Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased.

(2) If no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the court may, by any general rule to be made from time to time, authorise or direct.

298. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

299. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the court may for the time being regard as good securities shall be converted into money and invested in such securities.
300. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

301.—(1) Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit.

(2) Until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

302.—(1) Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the court to the account of the legatee.

(2) Such payment into the court shall be a sufficient discharge for the money so paid.

(3) Such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge may direct.

PART XXXVIII

OF THE PRODUCE AND INTEREST OF LEGACIES

303.—(1) Except in the case mentioned in subsection (2), the legatee of a specific bequest is entitled to the clear produce thereof (if any) from the testator's death.

(2) The clear produce of a specific bequest, which is contingent in its terms, shall form part of the residue of the testator's estate and shall not comprise the produce of such legacy between the death of the testator and the vesting of such legacy.
304. — (1) Except in the case mentioned in subsection (2), the legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

(2) A general residuary bequest, which is contingent in its terms, shall not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

(3) The income of any such bequest as is mentioned in subsection (2) shall be deemed to be undispersed by the will of the testator.

305. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death:

Provided that—

(1) where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator;

(2) where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator;

(3) where the sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

306. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate:

Provided that where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

307. The rate of interest shall be four per cent. per annum.

308. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

309. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.
PART XXXIX

OF THE REFUNDING OF LEGACIES

310. In this Part "executor" includes an administrator with the will annexed.

311. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

312. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

313.—(1) When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

(2) Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

314. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

315.—(1) Where an executor or administrator has given such notices as the court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution:

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.
(2) Subject to the provisions of sections 3 to 25 (both inclusive) of the limitation Decree, every suit instituted under this section to compel a refund by a person to whom an executor or administrator has paid a legally or distributed assets three years after the date of such payment or distribution shall be dismissed although limitation has not been set up as a defence.

316.-(1) A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

(2) Subject to the provisions of sections 3 to 25 (both inclusive) of the Limitation Decree, every suit instituted under this section to compel a refund to a person to whom an executor or administrator has paid a legally or distributed assets three years after the date of such payment or distribution shall be dismissed although limitation has not been set up as a defence.

317. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

318. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

319. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

320. The refunding shall, in all cases, be without interest.

321.-(1) The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

(2) Where a person not having his domicile in Zanzibar has died leaving assets both in Zanzibar and in the country in which he had his domicile at the time of his death, and there have been a grant of probate or letters of administration in Zanzibar with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in Zanzibar, after having given such notices as are
mentioned in section 315 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased’s property to persons residing out of Zanzibar who are entitled thereto, transfer, with the consent of the executor or administrator (as the case may be) in the country of domicile, the surplus or residue to him for distribution to those persons.

PART XL

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION

322. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

323. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

PART XL1

MISCELLANEOUS

324.—(1) When a grant of probate or letters of administration is revoked or annulled under this Decree, the person to whom the grant was made shall forthwith deliver up the probate or letters to the court which made the grant.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with a fine not exceeding one thousand five hundred shillings, or with imprisonment for three months, or with both such fine and imprisonment.

325.—(1) In any case in which the Beit-el-Mal is entitled to the whole or any portion of an estate it shall be lawful for the court in its discretion to order—

(a) a sum not exceeding one hundred and fifty shillings to be distributed in such proportions as it may think fit among persons who were dependent on the deceased;

(b) a sum not exceeding seven hundred and fifty shillings to be paid to the husband or wife or wives of the deceased.

(2) Notwithstanding anything to the contrary contained in this section, in any case, in which an estate is being administered by the Administrator-General and the Beit-el-Mal is entitled to the whole or any portion of such estate, it shall be lawful to the Administrator-General to pay or transfer property not exceeding seven hundred and fifty shillings in value to the husband or wife or wives of the deceased.
326.—(1) All monies payable to the Beit-el-Mal shall be paid by the persons administering the estate to the Accountant-General who shall carry the same to a separate account.

(2) The Accountant-General shall set aside twenty-five per cent. of all such monies received and shall hold the same for a period of five years from the time of its receipt as a reserve fund to meet possible claims.

(3) The balance shall be paid over by the Accountant-General to the Wakf Commissioners for Zanzibar or Pemba respectively for the repairing and upkeep of the mosques, the relief of the poor, and, if any money remains over, for such other purposes as are authorised by the law of Islam.

327. Any person claiming to be entitled to any money or property which has been paid to the Beit-el-Mal shall prosecute his claim before the court, and if he proves his claim to the satisfaction of the court, the court shall order payment to him of the amount of his claim out of the reserve fund, and the Accountant-General shall forthwith pay the same, and the order of the court shall be sufficient authority to him for such payment.

FIRST SCHEDULE

(Section 5(1))

APPLICATION OF THE DECREE TO THE ESTATES OF DECEASED MUSLIMS AND EXEMPTED PERSONS

1.—(1) The provisions of Parts II to XXVIII (both inclusive) of the Decree shall not apply to intestate or testamentary succession to the property of any Muslim.

(2) A Secretary of State shall have power by an order published in the Gazette either retrospectively from the 1st January, 1917, or prospectively, to exempt from the operation of all or any of the provisions of Parts II to XXVIII (both inclusive) of the Decree the members of any race, sect, or tribe in Zanzibar, or any part of any such race, sect or tribe, to whom he may consider it impossible or inexpedient to apply such provisions.

2. Subject to the provisions of Parts XXIX to XLI (both inclusive) of the Decree, Muslims and exempted persons shall be governed, in matters relating to inheritance, by the personal law to which they are subject.

3. When the deceased is a Muslim or an exempted person, nothing contained in section 177 of the Decree shall vest in his executor or administrator any property which would otherwise have passed by survivorship to some other person.
4. Subject to the provisions of any other law for the time being in force, the provisions of section 185 and 188 of the Decree (relating to the establishment of the rights of executors, administrators, legatees and heirs) shall not apply when deceased is a Muslim or an exempted person.

5.—(1) When the deceased has died intestate and is a Muslim or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased’s estate.

(2) When several such persons apply for administration, it shall be in the discretion of the court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

(4) Notwithstanding anything hereinbefore contained, when the peculiar circumstances of the case appear to the court so to require, the court may, if it thinks fit, for reasons to be recorded in its proceedings, of its own motion or otherwise grant letters of administration to the Administrator-General or to any other person even though there are persons who, in ordinary course, would be legally entitled to administration.

6. Subject to the provisions of any other law for the time being in force, section 275 of the Decree (relating to the application of the property of a deceased person in payment of his debts) shall not apply where the deceased is a Muslim or an exempted person.

7. Nothing contained in Parts XXIX to XL of the Decree shall, when the deceased is a Muslim or an exempted person,—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(d) affect the rights, duties and privileges of the Administrator-General.

SECOND SCHEDULE

(Section 5(2))

APPLICATION OF THE DECREE TO THE ESTATE OF DECEASED HINDUS AND BUDDHISTS

1. In this Schedule all words defined in section 2 of the Decree shall, unless there be something repugnant in the subject or context, be deemed to have the same meaning as the said section has attached to such words respectively.
2. Except as hereinafter provided, the provisions of Parts II to XXVIII (both inclusive) of the Decree shall not apply to intestate or testamentary succession to the property of any Hindu or Buddhist.

3. Subject to the provisions of Parts XXIX to XLI (both inclusive) of the Decree, Hindu and Buddhists shall be governed in matters relating to inheritance by the personal law to which they are subject.

4.—(1) Notwithstanding anything contained in paragraph 2 hereof, the following parts of the Decree (with the exceptions and modifications hereinafter set out) shall apply to all wills and codicils made by any Hindu, Jain, Sikh or Buddhist on or after the 1st September, 1870, namely:—

(a) Part VII (except section 46);
(b) Part VIII;
(c) Part X (except section 53 and 55);
(d) Part XI (except sections 77 to 80 (both inclusive), 83 and 85);
(e) Part XII (except sections 102 and 103);
(f) Parts XIII to XXVII (both inclusive);
(g) Section 185.

(2) Marriage shall not revoke any such will or codicil.

(3) Nothing herein contained shall authorise a testator to bequeath property which he could not have alienated inter vivos, or to deprive any persons of any right of maintenance of which, but for sub-paragraph (1) hereof, he could not deprive them by will.

(4) Nothing herein contained shall affect any law of adoption or intestate succession.

(5) Nothing herein contained shall authorise any Hindu, Jain, Sikh or Buddhist to create in property any interest which he could not have created before the 1st September, 1870.

(6) In applying sections 61, 62, 90, 94, 96, 97, 98, 99, 100 and 101 of the Decree to wills and codicils made under this paragraph—

(a) “child” and “son” shall include an adopted child;
(b) “daughter-in-law” shall include the wife of an adopted son;
(c) “grandchildren” shall include the children, whether adopted or natural-born, of a child whether adopted or natural-born.

5. When the deceased is a Hindu or Buddhist, nothing contained in section 177 of the Decree shall vest in his executor or administrator any property which would otherwise have passed by survivorship to some other person.

6. Subject to the provisions of any other law for the time being in force, the provisions of section 185 and 188 of the Decree (relating to the establishment of the right of executors, administrators, legatees and heirs) shall not apply where the deceased is a Hindu or Buddhist.
7.—(1) When the deceased had died intestate and is a Hindu or Buddhist, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased’s estate.

(2) When several such persons apply for administration, it shall be in the discretion of the court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

(4) Notwithstanding anything hereinbefore contained, when the peculiar circumstances of the case appear to the court so to require, the court may, if it thinks fit, for reasons to be recorded in its proceedings, of its own motion or otherwise grant letters of administration to the Administrator-General or to any other person even though there are persons who, in the ordinary course, would be legally entitled to administration.

8. Subject to the provisions of any other law for the time being in force, section 275 of the Decree (relating to the application of the property of deceased person in payment of his debts) shall not apply where the deceased is a Hindu or Buddhist.

9. Nothing contained in Parts XXIX to XL of the Decree shall, when the deceased is a Hindu or Buddhist,—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any persons of any right of maintenance to which he would otherwise have been entitled; or

(d) affect the rights, duties and privileges of the Administrator-General.

THIRD SCHEDULE

(Section 5(3) )

APPLICATION OF THE DECREE TO THE ESTATES OF DECEASED PARSI S

1. Part III of the Decree (relating to the rules of consanguinity) shall not apply to Parsis.

2. A Parsi is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

3. So much of Parts IV and V of the Decree as deal with the distribution of an intestate’s property shall not apply to Parsis.
Application of Part VI.

4. Save as hereinafter provided, Part VI of the Decree (dealing with the effect of marriage and marriage settlements on property) shall apply to Parsis:

Provided that nothing contained in this paragraph shall be deemed to confer upon a husband surviving his wife the same rights, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

FOURTH SCHEDULE

(Section 5(4))

APPLICATION OF THE DECREE TO PERSONS ADOPTED UNDER THE PROVISIONS OF THE ADOPTION OF CHILDREN DECREES, CAP. 55

1. In this Schedule "adoption order" has the meaning assigned to it by the Adoption of Children Decree.

2.—(1) Where at any time after the making of an adoption order the adopter or the person adopted or any other person dies intestate in respect of any real or personal property, such property shall, except as hereinafter provided, devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

(2) Nothing hereinbefore contained shall apply to any disposition of an entailed interest in any such property under an assurance made before the date of the adoption order by a will or by any instrument made inter vivos.

3. In any disposition of real or personal property made by a will after the date of an adoption order—

(a) any reference (whether express or implied) to the child or children of an adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;

(b) any reference (whether express or implied) to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and

(c) any reference (whether express or implied) to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

4. For the purposes of the devolution of any property in accordance with the provisions of this Schedule, and for the purposes of the construction of any disposition by will as is herein mentioned, an adopted person shall be deemed to be related to any other person being the child or adopted child of the adopter or (in the case of a joint adoption) of either of the adopters—
Succession

(a) where he or she was adopted by the two spouses jointly, and that other person is the child or adopted child of both of them, as brother or sister of the whole blood;

(b) in any other case, as brother or sister of the half blood.

5. Notwithstanding any rule of law, a disposition made by will executed before the date of an adoption order shall not be treated for the purposes of this Schedule as made after that date by reason only that the will is confirmed by a codicil made after that date.

6.—(1) Notwithstanding anything hereinbefore contained, trustees or personal representatives may convey or distribute real or personal property to or among the persons entitled thereto without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of conveyance or distribution.

(2) Nothing in this paragraph shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who has received it.

7. Where an adoption order has been made in respect of a person who has previously been adopted, the previous adoption shall for the purposes of this Schedule in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made by will after that date.

FIFTH SCHEDULE

Forms

Form 1

Caveat

(s. 242)

Let nothing be done in the matter of the estate of A.B., late of, deceased, who died on the day of, at, without notice to C.D. of.

Form 2

Grant of Probate

(s. 244)

I, of the High Court, hereby make known that on the day of, in the year, the last will of, late of, a copy whereof is hereunto annexed was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to the executor in the said will named, he having undertaken to administer the same and to make a full...
and true inventory of the said property and credits and exhibit the same in this court when lawfully required so to do, and further to exhibit in this court a true account of his administration of the said property and credits within one year from the date of this grant or within such further time as the court may appoint.

And it is hereby declared that a certificate under the hand of the Administrator-General dated the __________ day of __________, wherein is certified the due delivery of an estate duty affidavit in verification of the account of the said estate has been filed with this court.

Given under my hand and the seal of the court this __________ day of __________, 19__

GRANT OF LETTERS OF ADMINISTRATION

Form 3
(s. 245)

"I, ______________________ of the High Court, hereby make known that on the __________ day of __________ letters of administration __________ of the property and credits __________ of the __________, late of __________, deceased, were granted to ______________________ of the deceased, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits and exhibit the same in this court when lawfully required so to do, and further to exhibit in this court a true account of his administration of the said property and credits within one year from the date of this grant or within such further time as the court may appoint.

And it is hereby declared that a certificate under the hand of the Administrator-General dated the __________ day of __________, wherein is certified the due delivery of an estate duty affidavit in verification of the account of the said estate has been filed with this court.

Given under my hand and the seal of the court this __________ day of __________, 19__"
THE LAWS OF ZANZIBAR

CHAPTER 21

SUCCESSION

(SUBSIDIARY LEGISLATION)
CHAPTER 21

SUCCESSION

The Probate (Non-Contentious Proceedings) Rules

(Made under Article 56 of the Zanzibar Order-in-Council 1914)

1. These Rules may be cited as the Probate (Non-Contentious Proceedings) Rules.

2. Application for probate or letters of administration shall be made to the Judge either through an advocate of the court or in person.

3.—(1) Application for probate shall be made by petition in Form No. 1 in the Schedule, and application for letters of administration with the will annexed shall be made by petition in Form No. 2 in the said Schedule and every such petition shall be verified by one of the attesting witnesses, if procurable, in the form at the foot of the petition.

(2) The original will and codicils (if any) shall be annexed to every petition under this rule and shall also be accompanied, if not in English, by an English translation thereof certified by an official of the court to be a true and accurate translation.

4. Application for letters of administration shall be made by petition in Form No. 3 in the Schedule.

5. In any case in which probate or letters of administration is for the first time applied for after a lapse of one year from the death of the deceased the reason for the delay is to be explained in the petition. Should the explanation be unsatisfactory the Judge may require such further proof of the alleged cause of delay as he may think fit.

6. In all applications by a creditor for letters of administration it shall be stated particularly how the debt arose.

7. When interlineations, alterations, erasures or obliterations appear in the will (unless duly executed as required by the Succession Decree, or recited in or otherwise identified by the attestation clause) a statement must, if possible, be made in the affidavit of the attesting witness, whether they existed in the will before its execution or not.

8. If no affidavit by one of the attesting witnesses is procurable an affidavit shall be procured (if possible) from some other person (if any) who may have been present at the execution of the will; but if no affidavit from any such person can be obtained evidence on affidavit must be produced of that fact and of the handwritings of the deceased and attesting witnesses, and also of any circumstances which may raise a presumption in favour of due execution.
9. The Judge shall not grant probate of the will or administration with the will annexed of any blind or obviously illiterate or ignorant person, unless he has satisfied himself that the said will was read over to the testator before its execution or that the testator had at such time knowledge of its contents.

10. If a will contain a reference to any deed, paper, memorandum, or other document of such a nature as to raise a question whether it ought not to form a constituent part of the will, such deed, paper, memorandum or other document should be produced with a view to ascertaining whether it is entitled to probate, and if not produced its non-production should be accounted for. No deed, paper, memorandum or other document can form part of a will unless it was in existence at the time when the will was executed.

11. In cases in which it is not necessary that a will should be signed by the testator or attested by witnesses to constitute a valid testamentary disposition of the testator’s property, the testator’s intention that it should operate as his testamentary disposition must be clearly proved by affidavit.

12. Any appearance of an attempted cancellation of a testamentary writing by burning, tearing, obliteration or otherwise, and every circumstance leading to a presumption of abandonment or revocation of such writing or part thereof must be accounted for.

13. Where administration is applied for by one or some of the next-of-kin only, there being another or other next-of-kin equally entitled thereto, the Judge may require proof by affidavit that notice of such application has been given to such other next-of-kin.

14. Notice of every application for probate of the will or letters of administration shall be inserted as an advertisement in such newspapers as the Judge may direct, and such advertisement shall be deemed sufficient notice of the application to the next-of-kin of the deceased, except so far as the Judge may direct.

15. Unless a power of attorney constituting such attorney can, under section 85 of the Evidence Decree, be presumed to have been executed and authenticated as in the said section mentioned, the Judge may require further proof of its due execution.

16.—(1) Every administration bond shall be in a penalty of double the value of the property for which grant of letters of administration is to be made unless the court shall in any case think fit to direct the same to be reduced.

(2) In all cases two sureties shall be required to the administration bond unless the court shall otherwise direct.
(3) Administration bonds shall be attested by the Registrar or District Registrar who shall require the sureties to justify in every case unless the court shall otherwise direct.

(4) All such bonds and all affidavits of justification of sureties shall be in Forms No. 4 and No. 5 respectively in the Schedule.

Marking will. 17. Every will, copy of a will, or other testamentary paper to which an executor or administrator with the will annexed is sworn or affirmed shall be marked by the person before whom he is sworn or affirmed.

Renunciation. 18. No person who renounces probate of a will or letters of administration of the property of a deceased person in one character shall, without the leave of the Judge, take out representation to the same deceased in another character.

Service of citations. 19. Citations shall be served personally when possible. Personal service shall be affected by leaving a true copy of the citation with the party cited and showing him the original.

Service by advertisement. 20. Citations which cannot be personally served as required by rule 19 shall be served by the insertion, as an advertisement in some local newspapers, as the Judge may direct, of a Notice in Form No. 6 in the Schedule.

SCHEDULE

IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT ......................................................

TESTAMENTARY AND INTESTATE JURISDICTION

(Rule 3) Form No. 1

APPLICATION FOR PROBATE

Cause No. .................. of 19.....

In the Estate of ..........................................(insert name in full, and profession. State if deceased was a bachelor or spinster) deceased. The Petition of ............

Sheweth as follows—

1. That the above-named .................. died at .............. on or about the .............. day of .............. 19.....

[his]

2. That the said deceased at the time of —— death had a fixed place of

and

abode at .................................. —— left property within the jurisdiction of this court.

or
3. That the said deceased was at the time of death a her (state nationality) and that — Estate is governed by (state the her personal law to which the deceased's estate is subject) law.

4. That the writing hereunto annexed and marked is the last Will and Testament of the deceased.

5. That the said Will was duly executed at on the day of 19...

6. That by the said Will the deceased appointed (or “one of the executors”) Executors thereof.

7. That the amount of assets likely to come into the petitioner's hands is...

8. That the petitioner will faithfully administer the property and credits of the said deceased, and that he will, when required by this court so to do, exhibit in this court a true and perfect inventory and account of the said property and credits, and that he will further, within one year from the date of the grant or within such further time as the court may appoint, exhibit in this court a true account of his administration of the same.

The petitioner prays that probate may be granted to I, the petitioners in the above petition, declare that what is stated therein is true to the best of—information and belief.

Solemnly declared by the above-named deponent at on the day of 19...

Before me.

Commissioner for Oaths.
I, one of the witnesses to the last Will and Testament of testator
the—mentioned in the above petition, declare that I was present
testatrix
and saw the said—affix—thereto (or that the—
testatrix
acknowledged, in my presence, the writing annexed to the above petition
his
to be—last Will and Testament).
she
Solemnly declared by the
above-named deponent at

on the day of

19

Before me,  
Commissioner for Oaths.

IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT

TESTAMENTARY AND INTESTATE JURISDICTION

(Rule 3)  Form No. 2

APPLICATION FOR LETTERS OF ADMINISTRATION
WITH THE WILL ANNEXED

Cause No. of 19

In the Estate of (insert name in full, and profession. State if deceased was a bachelor or spinster) deceased. The Petition of Sheweth as follows—

1. The above-named died at on or about the day of 19

his

2. That the said deceased at the time of death had a fixed place of her

abode at —left property within the jurisdiction of this court.

3. That the said deceased at the time of —death was a her

(state nationality) and that—Estate is subject to (state the her

personal law to which the deceased's estate is subject) law.
4. That the writing hereto annexed and marked is the last Will and Testament of the deceased.

5. That the said Will was duly executed on the day of 19.

6. That by the said Will the deceased appointed (or no executors as the case may be) (a) Executors thereof.

7. That the said deceased left him surviving (state the family or relatives of the deceased, and their residence).

8. That the amount of assets likely to come into the petitioner's hands is.

9. That the petitioner will faithfully administer the property and credits of the said deceased, and that he will, when required by this court so to do, exhibit in this court a true and perfect inventory and account of the said property and credits, and that he will further, within one year from the date of the grant or within such further time as the court may appoint, exhibit in this court a true account of his administration of the same.

The Petitioner prays that Letters of Administration with the said Will annexed, may be granted to ____________________________.

_________________________ the petitioners in the above petition, declare that

We our

what is stated therein is true to the best of information and belief.

Solemnly declared by the above-named deponent at on the day of 19.

Before me,

Commissioner for Oaths.

(a) If an executor appointed state whether he has died without proving the Will, or has renounced probate, or is absent from Zanzibar, or is otherwise legally incapable of applying for probate: State further capacity in which petitioner applies.
I, one of the witnesses to the last Will and Testament of
the-mentioned in the above petition, declare that I was present
and saw the said-—affix—thereto (or that the
acknowledged, in my presence, the writing annexed to the above petition
his
to be—last Will and Testament).
her

Solemnly declared by the
above-named deponent at 

on the day of 19

Before me,
Commissioner for Oaths.

IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT

TESTAMENTARY AND INTESTATE JURISDICTION

(Rule 4) Form No. 3

APPLICATION FOR LETTERS OF ADMINISTRATION

Cause No. of 19

In the Estate of (insert name in full, and profession. State if deceased was a bachelor or spinster), deceased. The petition of

Sheweth as follows:—

1. That the above-named, died at or about the day of 19, his

2. That the said deceased at the time of death had a fixed place of abode at — left property within the jurisdiction of this court.
3. That the said deceased was at the time of his death a..............
   her
   (state nationality) and that — Estate is governed by..............(state her
   the personal law to which the deceased's estate is subject) law.

4. That the said deceased died intestate, and that due and diligent search has been made for a Will, but none has been found.

5. That the said deceased left surviving — ......................(here state the her
   family or relatives of the deceased, and their residence).

6. That the petitioner as......................(state relationship to the deceased) of the deceased claims to be entitled to a..............share of......................estate.

7. That the amount of assets likely to come into the petitioner's hands is......................

8. That the petitioner will faithfully administer the property and credits of the said deceased, and that he will, when required by this court so to do, exhibit in this court a true and perfect inventory and account of the said property and credits, and that he will further, within one year from the date of the grant or within such further time as the court may appoint, exhibit in this court a true account of his administration of the same.

The petitioner therefore prays that Letters of Administration may be granted to......................

I — the petitioners in the above petition, declare that what is stated We my therein is true to the best of — information and belief.
   our

Solemnly declared by......................the
above-named deponent at ......................
on the......................day of......................

19........

Before me,

Commissioner for Oaths.
IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT ........................................

TESTAMENTARY AND INTESTATE JURISDICTION

(Rule 16) Form No. 4

Cause No........................................of 19....

ADMINISTRATION BOND

In the Estate of........................................(insert name in full) Deceased.

Know all men by these presents that we........................................are held and
firmly bound, jointly and severally, unto........................................or his successor in
office, in the penal sum of ........................................Shillings, to be paid to the said
........................................or his successor in office for which payment well and truly
to be made we do bind ourselves, and each and every one of us jointly
and severally, our, and each and every one of our heirs, executors, and
administrators, firmly by these presents, sealed with our seals.

Dated this........................................day of........................................19....

Now the condition of this obligation is such that if the above bounden
........................................ADMINISTRATOR of the property and credits of the above-
named deceased, shall well and truly administer according to law the
said property and credits and shall, when lawfully required so to do,
exhibit in this court a true and perfect inventory and account of the said
property and credits, and further shall on or before the........................................day
of........................................19....exhibit in this court a true account of — administer
his
stration thereof, and further shall deliver and pay unto such person or
persons respectively as shall be lawfully entitled thereto the rest and
residue of the said property and credits which shall be found remaining
upon the said administrator’s account, then this obligation to be void
and of no effect, or else to remain in full force and virtue.

Signed, sealed and delivered by }
........................................in the presence of 
IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT.....................

TESTAMENTARY AND INTESTATE JURISDICTION

(Rule 16)

Cause No..................... OF 19....

In the Estate of................................................. Deceased

AFFIDAVIT OF JUSTIFICATION OF SECURITIES

We, ......................................................................................... of ................................................. and
.................................................................................................. of ................................................. jointly
and severally make oath, that we are the proposed sureties on behalf
of .......................................................................................................................... the intended administrator of the
estate of the said........................................................................................................ of .................................................
deceased, in the penal sum of Shs......................................................................, for his faithful
administration of the said estate, and I, the said................................................................
........................................................................................................................................
for myself further make oath that I am, after payment
of all my just debts, well and truly worth in real or personal estate the sum of Shs....................................................., and I, the said................................................................
........................................................................................................................................
for myself further make oath that I am, after payment
of all my just debts, well and truly worth in real or personal estate the sum of Shs.....................................................

Sworn at ................................................

this the .............................................. day of

.........................................................

......................................................... 19.....

IN THE HIGH COURT FOR ZANZIBAR

TESTAMENTARY AND INTESTATE JURISDICTION

(Rule 20) Form No. 6

Petition for....................., deceased

........................................................., Petitioner

All persons claiming to have any interest in the estate of the above-
named deceased are hereby cited to come and see the proceedings if they
think fit before the grant of

Witness................................................... Judge, the .............................................. day of ................................................., in
the year of Our Lord................................................. and in the .............................................. year of our
reign.

(Signed)...................................................

Petitioner's Advocate.

(Signed)...................................................

Registrar
CHAPTER 21

The Probate (Contentious Proceedings) Rules

(Made under Article 40 of the Zanzibar Order in Council, 1924, and section 24 of the Courts Decree, Cap. 3)

1. These Rules may be cited as the Probate (Contentious Proceedings) Rules.

2.—(1) In these Rules, unless the context otherwise requires—

“the Decree” means the Succession Decree;

“grant” means a grant of probate or letters of administration under the provisions of the Decree;

“petitioner” means an applicant to the court for a grant;

“proved in solemn form of law” means proof of due execution of a will by evidence of the nature required according to the practice and procedure of courts of law having jurisdiction in matters of probate in England for proof of a will in solemn form of law.

(2) Unless the context otherwise requires, words and expressions in these Rules shall have the meanings respectively assigned to them by the Decree.

3. The provisions of Order III of the Civil Procedure Rules shall apply to proceedings under these Rules (including proceedings in respect of the lodgment of caveat) in the same manner as they apply to proceedings under the Civil Procedure Decree.

4. Any person intending to oppose the issuing of a grant must lodge a caveat with the Judge or District Registrar.

5. Any person lodging a caveat may withdraw the same at any time prior to the commencement of a suit under the provisions of rule 12, but shall not withdraw the same after the filing of the affidavit referred to in rule 10 in support thereof without leave of a Judge, which shall be granted subject to such terms (if any) as to payment of costs as the court may direct.

6. Immediately upon a caveat being lodged with the District Registrar he shall send the said caveat together with any application for the grant or other papers relating thereto to the Registrar who shall submit the same to the Judge for his directions.

7. Where a caveat is lodged with the Judge and there is reason to believe that the deceased person in respect of whose estate such caveat is lodged died, or at the time of his death had a permanent place of residence or left movable or immovable property in Pemba, the Registrar shall forthwith send a duplicate copy of such caveat to the District Registrar.
8. No caveat shall affect any grant made on the day when the caveat is lodged.

9. Notice of the lodging of the caveat shall be given by the Registrar or District Registrar (as the case may be) to the petitioner.

10. (1) In every case in which a caveat is lodged an affidavit in support thereof shall be filed within eight days of lodging the same.

(2) Such affidavit shall state the right and interest of the caveator and the grounds of the objections to the application for the issuing of a grant.

(3) If such affidavit be not filed within such time as aforesaid or within any other period fixed or granted under this rule, the caveat shall not prevent the grant.

(4) Notwithstanding anything hereinbefore contained, the Judge may, in his discretion, enlarge the period of eight days or any other period fixed or granted by him for the filing of such affidavit, even though the period originally fixed or granted may have expired:

Provided that no such affidavit shall be filed after the period fixed or granted for filing the same without the order of the Judge.

(5) The provisions of Order XIXI of the Civil Procedure Rules shall apply to all affidavits filed under this rule.

11. Where the application is for the grant of probate, the party opposing the same may, with his affidavit, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side, unless the court shall be of opinion that there was no reasonable ground for opposing the will.

12. (1) Upon the affidavit in support of the caveat being filed, the petitioner shall be called upon by notice to take out a summons within such time as may be fixed by such notice, and the proceedings shall be numbered as a suit in which the petitioner shall be the plaintiff and the caveator the defendant.

(2) The proceedings in such suit shall, as nearly as may be, be according to the provisions of the Civil Procedure Decree.

13. (1) The court may at any time before the issue of a grant or the final disposal of any suit commenced under rule 12 do any one or more of the following acts for the protection or preservation of the property of a deceased person, namely,

(a) appoint an officer to take possession of such property and to hold the same subject to the directions of the court; or
(b) grant to any person whom it may think fit letters of administration limited to the collection and preservation of such property, and giving discharges for debts due to his estate, subject to the directions of the court; or

(c) appoint a receiver of all or any of the property of the deceased person.

(2) An appointment under sub-paragraph (a) of paragraph (1) may be made at any time before the institution of a suit under rule 12 at the instance of any person claiming to be interested in the estate of the deceased or by the court on its own motion where it considers that the property incurs any risk of loss or damage:

Provided that—

(a) except where it appears that the object of making the appointment would be defeated by the delay before making the same, notice of application for the same by any party claiming to be interested as aforesaid shall be given to all other persons who in the opinion of the court are likely to be interested in the estate of deceased; and

(b) any appointment under sub-paragraph (a) of paragraph (1) may be varied or set aside by the court on application made thereto by any person dissatisfied with the making of the same.

(3) Application for a grant to issue under sub-paragraph (b) of paragraph (1) may be made in accordance with the provisions of the Probate (Non-Contentious Proceedings) Rules, 1920, or, at any time after the institution of a suit under rule 12, by any party to such suit after notice to the opposite party and shall be supported by an affidavit.

(4) An appointment under sub-paragraph (c) of paragraph (1) shall only be made after institution of a suit under rule 12 on the application of a party to such suit after notice to the opposite party:

Provided that if it appears that the object of making such appointment would be defeated by the delay before granting the same, such order may be made ex parte.

(5) Any order for the appointment of a receiver may be discharged, or varied, or set aside by the court on application made thereto by any person dissatisfied with such order.

(6) The provisions of Order XLV of the Civil Procedure Rules shall apply in the case of any receiver appointed under this rule.

(7) Nothing contained in this rule shall be deemed to affect—

Cap. 23.

(a) the provisions of section 7 or section 11 of the Administrator-General's Decree; or

(b) the power of the court to make any interlocutory order in regard to the estate of a deceased person as may appear to it to be just and expedient.
14.—(1) Where it is made to appear to the satisfaction of the court that any paper or writing being or purporting to be testamentary and relating to the estate of a deceased person is in the possession or control of any person, the court may order such person to produce and bring into court any such paper or writing within such time as may be limited by such order.

(2) At the time of producing and bringing into court of any such paper or writing in pursuance of such order the person bringing the same into court shall make and sign a declaration giving a short description of the paper or writing so produced and brought into court.

(3) If the person upon whom such order is served has not at the time of such service, but formerly had such paper or writing in his possession or control, he shall make and sign a declaration giving a short description of such paper or writing and further stating when last such paper or writing was in his possession, and what has become of it, and in whose possession it now is:

(4) If the person upon whom such order is served has not and has never had in his possession or in the possession or control of his advocate or agent or any other person on his behalf any such paper or writing, he shall make and sign a declaration to that effect.

(5) Every declaration made and signed under paragraphs (2) and (3) shall further state that the declarant has not now and has never had in his possession or control or in the possession or control of his advocate or agent or other person acting on his behalf any such paper or writing other than and except the paper or writing set forth in such declaration.

(6) Every declaration required to be made by this rule shall be dated and shall be filed in court within the time limited by the order for producing and bringing into court any such testamentary paper or writing.

(7) The provisions of Order XIX (other than rules 10, 11, 12 and 13 thereof) of the Civil Procedure Rules shall apply to an order issued under this rule in the same manner as they apply to a summons to a witness to produce a document in a civil suit.

(8) No fee shall be charged for the filing in court of any such declaration or for lodging in court of any paper or writing, which is produced in pursuance of an order made under this rule.

15.—(1) The court may direct that any person upon whom an order has been served under rule 14 shall attend for the purpose of being examined respecting any paper or writing purporting to be testamentary and believed to be, or to have been, in the possession or control of such person, in any of the following circumstances, namely:

(a) if he fails to produce or bring into court any paper or writing as required by an order issued under rule 14; or
(b) if he fails to make a full and sufficient declaration in the manner prescribed in rule 14; or

c) if there is reason to believe that any statement made by him in any declaration prescribed by rule 14 is false in any material particular; or

d) if it be not shown that any such paper or writing is in the possession or under the control of any such person, but there is reason to believe that he has the knowledge of any such paper or writing.

(2) The provisions of Order XIX (other than rules 10, 11, 12 and 13 thereof) of the Civil Procedure Rules shall apply to an order issued under this rule in the same manner as they apply to a summons to a witness to attend and give evidence in a civil suit.

(3) A person upon whom such order is issued shall be bound to answer such questions as may be put to him by the court, and, if so ordered, to bring in such paper or writing as the court shall direct.

(4) Such person shall be subject to the like punishment under the Penal Decree, in case of default in not attending, or in not answering such questions, or in not bringing in such paper or writing, as he would have been subject to in case he had been party to a suit, and made such default.

16.—(1) Where in any proceedings under these Rules it is made to appear to the court that any person (other than a party to such proceedings) is or claims to be the heir of the deceased person or has or claims to have any interest in the estate of the deceased person, the court may, if it thinks fit, issue a citation to such person to come and see the proceedings before any grant is made.

(2) Such citation may be issued by the court of its own motion or on the application of a party to the proceedings.

(3) Every application by a party under this rule shall be supported by an affidavit.

(4) Citations issued under this rule shall be in such form as may be prescribed and shall be served in the manner prescribed in the Probate (Non-Contentious Proceedings) Rules, 1920, for the service of citations in the non-contentious testamentary and intestate jurisdiction of the court.

(5) Any person who, having been served with a citation under this rule wishes to take part in the proceedings, shall notify his desire in writing to the Registrar or District Registrar (as the case may be), who shall thereupon submit the same to the Judge for his directions.

17.—(1) Any person claiming to be the heir or to be interested in the estate of a deceased person may apply to the court by summons for leave to intervene in any proceedings under these Rules.

(2) Such summons shall be served upon such persons and in such manner as the court may direct.
(3) If on the hearing of the application the court grants leave to intervene, such intervention shall be made in the manner and subject to such terms (if any), as the court may direct.

18.—(1) A guardian shall be appointed by the court for a minor for the purpose of taking any step in any proceedings under these Rules (other than proceedings in a suit commenced under the provisions of rule 12).

(2) Such application shall be made in the name and on behalf of the minor and shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy adverse to that of the minor and that he is a fit person to be so appointed.

(3) Such application may be made ex parte but the court may set aside the appointment of such guardian on the application of any person dissatisfied with such appointment.

(4) Where a guardian has been appointed under the provisions of paragraph (1) to take on behalf of a minor any step in such proceedings, no further appointment shall be required to enable such guardian to take any subsequent step in the same proceedings, unless the court shall otherwise direct at the time of appointment of such guardian.

(5) Where any step has been taken in any proceedings under these Rules (other than proceedings in a suit commenced under the provisions of rule 12) by or on behalf of a minor without a guardian, any person dissatisfied with such proceedings may apply to the court to have such proceedings set aside and the court, after giving notice to the person by whom such step has been taken and after hearing his objections (if any), may—

(a) order all or any of such proceedings to be set aside; or
(b) order that all further proceedings in the matter in dispute between the parties shall be stayed until a guardian of the minor shall have been appointed in accordance with the provisions of paragraph (1); or
(c) make such other order in the matter as it thinks just and expedient, and in making such order may direct that the costs of the application and of all or any of the previous proceedings shall be paid by the advocate or other person by whom the step in the proceedings complained of was taken or by such other person or out of such fund as it shall think fit.

(6) Rules 6 to 14 (both inclusive) of Order XXXVI of the Civil Procedure Rules shall apply to all proceedings under these Rules (other than proceedings in a suit commenced under the provisions of rule 12) in the same manner as they apply to suits by or against minors.

(7) The provisions of Order XXXVI of the Civil Procedure Rules shall apply to all suits commenced by or against minors under the provisions of rule 12 hereof:
Provided that when prior to the institution of such suit a guardian of the minor has been appointed under paragraph (1), no further application to the court for the appointment of a guardian shall be necessary for the purpose of instituting or defending a suit by or on behalf of a minor under rule 12.

19.—(1) Where any person of unsound mind might except for the reason of his unsoundness of mind sue as a plaintiff or be liable to be sued as a defendant in any action or suit, he may take a step in any proceedings under these Rules by a guardian appointed for that purpose.

(2) The provisions of rule 18, so far as they are applicable, shall extend to persons of unsound mind.

(3) For the purposes of this rule “person of unsound mind” includes a person who has been adjudged to be of unsound mind in accordance with the provisions of any law for the time being in force and any other person who, although not so adjudged, is found by the court on inquiry to be incapable by reason of unsoundness of mind or of mental infirmity of protecting any interest which he may have in the estate of a deceased person.

20.—(1) A person who wishes to take any step in any proceedings under these Rules (other than proceedings in a suit commenced under rule 12) may apply to the court for leave to take such step as a poor person and, upon such application being made the provisions of Order XXXVII of the Civil Procedure Rules shall apply to all such proceedings in the same manner as they apply to suits by or against poor persons.

(2) No subsequent step shall be taken in any such proceedings by any such person without the further leave of the court:

Provided that further evidence as to the poverty of such person shall not be necessary for the purpose of applying for such further leave, unless the court otherwise directs.

(3) Where any such subsequent step in the proceedings has been taken by any such person without such further leave, the court may on the application of any other person interested in the property of the deceased—

(a) order any such proceedings taken without such leave to be set aside; or

(b) confirm such proceedings upon such terms (if any) as the court may direct; or

(c) make such other order in the proceedings as appears to it to be just and expedient.

(4) The provisions of Order XXXVII of the Civil Procedure Rules shall apply to all suits commenced under rule 12 hereof by or against a poor person:
Provided that, where any such person has been allowed to take any
previous step as a poor person in any proceedings under these Rules
in relation to the estate of the deceased person, no further evidence
as to the poverty of such person shall be necessary, unless the court
otherwise directs.

21.—(1) The provisions of Order XXVI of the Civil Procedure Rules
shall apply to all proceedings in any suit commenced under the pro-
visions of rule 12 of these Rules.

(2) The provisions of the said Order shall also apply to all other
proceedings under these Rules in the same manner as they apply in
the case of the death, marriage or insolvency of a plaintiff.

(3) Where in any proceedings under these Rules (other than pro-
ceedings in a suit commenced under the provisions of rule 12 hereof),
it is made to appear to the court that an heir of a deceased person or
a person interested in the estate of a deceased person has died, the
court may direct that no further step shall be taken in any such pro-
ceedings without such notice to the legal representative of such heir
or other person as the court may direct and in such case the provisions
of Order XXVI of the Civil Procedure Rules shall apply in the same
manner as they apply in the case of the death of a defendant.

(4) Notwithstanding anything hereinbefore contained the provisions
of this rule shall not apply to the assignee of the heir of a deceased
person or any other person having any interest in the estate of a deceased
person and no such assignee shall take any step or intervene in any
proceeding under these Rules without the leave of the court first had and
obtained.

(5) For the purposes of this rule “assignee” means a person claiming
an interest in the estate of a deceased person by reason of an assignment
made under an agreement inter vivos other than an assignment by
operation of law.

22.—(1) Save as may otherwise be provided by these Rules, the Costs
of an incidental to all proceedings under these Rules shall be
in the discretion of the court, and the court shall have full power
to determine by whom or out of what property and to what extent
such costs are to be paid, and to give all necessary directions for the
purposes aforesaid.

(2) Where the court directs that costs shall not follow the event,
the Court shall state its reasons in writing.

(3) The court may direct that any costs awarded under these Rules
shall be chargeable with interest at a rate not exceeding six per cent.
per annum.
Cap. 28.

(4) The provisions of the Advocates' Remuneration and Taxation of Costs Rules, 1925, shall apply to taxation of all costs awarded under these Rules.

(5) Costs awarded under these Rules shall be payable and recoverable in the manner prescribed under Orders XXIV and XXV of the Civil Procedure Rules for the payment or recovery of money due under a decree for payment of money.

Forms.

23.—(1) The forms given in the Appendices to the Civil Procedure Rules with such variations as the circumstances of each case may require, shall be used for the purposes therein mentioned in all suits commenced under the provisions of rule 12 of these Rules.

(2) In all other proceedings under these Rules the forms in the Schedule hereto, or forms to the like effect, may be used in the cases to which they refer with such variations as the circumstances may require.

SCHEDULE

FORM 1

TITLE OF PROCEEDINGS PRIOR TO COMMENCEMENT OF SUIT UNDER RULE 12

IN THE COURT OF ..........................................

In the matter of the estate of A.B. deceased

On the application of C.D. (add description and residence)

FORM 2

TITLE OF PROCEEDINGS AFTER COMMENCEMENT OF SUIT UNDER RULE 12

IN THE COURT OF ..........................................

In the matter of the estate of A.B. deceased

C.D. (add description and residence) .................................. Plaintiff

against

E.F. (add description and residence) .................................. Defendant

FORM 3

DESCRIPTION OF PARTIES IN PARTICULAR CASES

(The description of the parties as set out in Appendix A of the Civil Procedure Rules may be used in the particular cases to which they are applicable.)
FORM 4
CAVEAT

(Title)

Let nothing be done in the matter of the estate of A.B., late of

…………………………………………………………………………………….. deceased, who died on the

……………… day of …………………………………………………….., 19………. at ………………………………………………………………..

without notice to C.D. of ……………………………………………………………..

……………………………………………………………………………………..

FORM 5
NOTICE OF LODGMENT OF CAVEAT

(Title.)

To ………………………………………………………………………………………..

……………………………………………………………………………………..

Take notice that on the ………………… day of …………………………….., 19………..
a caveat was filed in my office in the above petition by ……………………………………………..

……………………………………………………………………………………..

Dated this …………… day of ……………………………….., 19………..

……………………………………………………………………………………..

Registrar

FORM 6
NOTICE OF AFFIDAVIT IN SUPPORT OF CAVEAT

(Title)

To ………………………………………………………………………………………..

……………………………………………………………………………………..

Take notice that on the ………………… day of ……………………………….., 19………..
an affidavit in support of the caveat was filed in my office in the above

petition by ………………………………………………………………………………………………..
the above-named defendant, and that the petition became a suit on
that date and that you are required to apply for and lodge for service a
summons within twenty-one days from such last mentioned date.

A copy of the said affidavit is annexed hereunto.

Dated this …………… day of ……………………………………….., 19………..

……………………………………………………………………………………..

Registrar
FORM 7

NOTICE OF WITHDRAWAL OF CAVEAT

(Title)

To the Registrar,
High Court, Zanzibar.

Take notice that I hereby desire to withdraw the caveat entered by me in the above matter on the __________ day of __________________, 19_________

Dated this __________ day of __________________, 19_________

(Signed) __________________________________________

Caveator

FORM 8

CITATION TO SEE PROCEEDINGS

(Title)

WHEREAS it appears by the affidavit of C.D., sworn the __________ day of __________________, 19_________, that there is now depending in this court a probate action entitled “A. and another against G. Suit No. __________________ of 19_______”, wherein the plaintiffs are proceeding to prove in solemn form of law the alleged last will and testament dated the __________ day of __________________, 19_______, of E.F., of __________________

________________________________________, 19_______, who died on the __________ day of __________________, 19_______, at __________________

And whereas it further appears by the said affidavit that you are the lawful __________________________________ of the said deceased, and one of the persons entitled to share in his estate in the event of an intestacy:

Now this is to give notice to you the said A.B. to appear in the said action, either personally, or by your advocate, should you think it for your interest so to do, on __________ the day of __________________, 19_______, at __________ o’clock in the forenoon or at any other time during the dependence of the said action and before final judgment shall be given therein. And take notice that, in default of your so doing, the said court will proceed to hear the said will proved in solemn form of law and pronounce judgment in the said action, your absence not withstanding.

Dated this __________ day of __________________, 19_______

________________________________________

Chief Justice
FORM 9

ORDER TO OFFICER OF COURT TO TAKE POSSESSION OF PROPERTY

(TITLE)

Upon application of ____________________________________________________________

and upon this court being satisfied that danger is to be apprehended of the misappropriation, deterioration or waste of the property of the above-named deceased, this court doth under section 232 of the Succession Decree authorise and enjoin A.B. an officer of this court to collect and take possession of the assets of the said deceased, situate within the local limits of the Ordinary Original Civil Jurisdiction of this court, and to hold the same pending the further order of this court.

And it is further ordered that the costs of and incidental to this order be paid out of the estate of the said deceased.

Given under my hand and the seal of this court this ________________ day of _____________________________, 19__________

__________________________________________
Chief Justice

FORM 10

BOND OF ADMINISTRATOR PENDENTE LITE

(TITLE)

KNOW ALL MEN by these presents, that we, C.D., of ________________________________,

E.F., of ________________________________,

and G.H., of ________________________________,

are jointly and severally bound unto the Chief Justice of the High Court of Zanzibar, in the sum of Shillings _____________________________ of good and lawful money of Zanzibar, to be paid to the said Chief Justice, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this ________________, day of _____________________________, 19__________

Whereas A.B., of ________________________________,

died on the ________________ day of _____________________________, 19__________ at _____________________________

having, as asserted, made and duly executed his last will and testament, dated the ________________ day of _____________________________, 19__________.

And whereas there is now depending in the High Court a probate action
entitled M.N. against P.Q., touching the validity of the said will.
And whereas on the ______ day of ___________ 19______
His Honour ________________________ ordered (or as the case may be) that
the said C.D. be appointed administrator of the estate of the said A.B.,
pending the said action (limited to (set out limitations in order, if any)).

Now the condition of this obligation is such, that if the above-named
C.D., the intended administrator of all the estate which by law devolves
to and vests in the personal representative of the said deceased (limited
as aforesaid), do pending the said action, well and truly administer
the said estate, save distributing the residue thereof, under the direction
and control of the said court; and also do make or cause to be made
a true and perfect inventory of such estate, and do exhibit the same
into the principal probate registry of the said court, together with a
just and true account of ________________________ administration thereof,
whenever thereunto lawfully required, then this obligation to be void
and of none effect, or else to remain in full force and virtue.
Signed, sealed, and delivered
by the above-named ________________________
in the presence of ________________________

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FORM 11

LETTERS OF ADMINISTRATION PENDENTE LITE

(Title)

Whereas A.B. of ________________________ died on the _______ day of ___________ 19______ , having, as asserted,
made and duly executed his last will dated the ________________________ day of
_________________________ 19______ . And whereas there is now depending in the
High Court a probate action entitled M.N. against P.Q., touching the
validity of the said will.

Now I, ________________________ of the High Court, hereby make known that on the ___________ day of
_________________________ in the year 19______ letters of administration
of the property and credits of the said A.B. ________________________ were granted to ________________________
limited to the collection and preservation of the property of the said
A.B. deceased and to giving discharges for debts due to his estate and
limited also (here set out any special directions of the court) he having undertaken to administer the same in accordance with the terms hereof and subject to the limitations aforesaid, and to make a full and true inventory of the said property and credits and exhibit the same in this court when lawfully required so to do, and further to exhibit in this court a true account of his administration of the said property and credits within one year from the date of this grant or within such further time as the Court may appoint.

And it is hereby declared that a certificate under the hand of the Administrator-General dated the .......... day of .................................. 19..... wherein is certified the due delivery of an estate duty affidavit in verification of the account of the said estate has been filed with this court.

Given under my hand and the Seal of the court this .......... day of .................................. 19.....

.................................
Chief Justice

FORM 12

APPOINTMENT OF A RECEIVER

>Title

To ..................................................

of ..................................................

Whereas A.B. of .................................................. died on the .......... day of .................................. 19..... having, as asserted, duly made and executed his last will and testament dated the .......... day of .................................. 19..... And whereas the above-named suit is now depending in this court touching the validity of the said last will and testament.

You are hereby appointed (subject to your giving security to the satisfaction of the court) receiver of the property of the said A.B. deceased with full powers under the provisions of Order XLV of the Civil Procedure Rules.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on .................................................. and you will be entitled to remuneration at the rate of .................................................. under authority of this appointment.

Given under my hand and the Seal of the court this .......... day of .................................. 19.....

.................................
Chief Justice
FORM 13

BOND TO BE GIVEN BY RECEIVER

(Title)

(The bond in Form No. 10 in Schedule I, Appendix G, of the Civil Procedure Rules may be used with such alterations as may be necessary)

FORM 14

NOTICE TO BRING IN TESTAMENTARY PAPER, ETC

(Title)

To

Whereas it appears by the affidavit of sworn and filed on the date of in the Testamentary and Intestate Side of this Court that a certain original paper or script dated the day of in the testament of deceased, is now in your possession within your power or under your control:

Now this is to command you that, within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Registry at the Testamentary and Intestate Side of this court the said original paper or script now in the possession within the power or under the control of you the said , and this you shall in no wise omit under pain of the law and contempt thereof.

Given under my hand and the Seal of the Court this day of

Chief Justice

FORM 15

DECLARATION AS TO TESTAMENTARY PAPERS

(Title)

1, C.D. of say as follows:—

1. I have in my possession or power the testamentary papers and writings set forth in the first schedule hereto.

2. I have had, but have not now, in my possession or power the testamentary papers and writings in this suit set forth in the second schedule hereto.
3. The last-mentioned testamentary papers and writings were last in my possession or power on (state when, and what has become of them, and in whose possession they now are).

4. According to the best of my knowledge, information, and belief I have not now, and never had in my possession, custody, or power, or in the possession, custody or power of my advocates or agents, advocate or agent, or in the possession, custody or power of any other persons or person on my behalf, any testamentary papers and writings, or any copy or extract from any such paper or writing, other than and except the documents set forth in the said first and second schedules hereto.

Dated this __________ day of _________________, 19__________

(Signed) ___________________________________________________________________

(Name of declarant)

FORM 16

DEFENDANT'S WRITTEN STATEMENT

(Title)

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Succession Decree.

2. The deceased at the time the said will and codicil respectively purport to have been executed was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff (and others acting with him whose names are at present unknown to the defendant).

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant’s present knowledge being (state the nature of the fraud).

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof (or of the contents of the residuary clause in the said will, as the case may be).

6. The deceased made his true last will, dated the 1st January, 1913, and thereby appointed the defendant sole executor thereof.

The defendant claims—

(1) that the court will pronounce against the said will and codicil pronounced by the plaintiff;

(2) that the court will decree probate of the will of the deceased, dated the 1st January, 1913, in solemn form of law.
THE PRESCRIBED FEES (PROBATE) RULES

(Made under Article 40 of the Zanzibar Order in Council, 1924, and section 24 of the Courts Decree, Cap. 3)

1. These Rules may be cited as the Prescribed Fees (Probate) Rules.

2. The fees specified in the Schedule shall be leviable in the High Court in respect of the several matters and proceedings mentioned therein.

SCHEDULE

(1) On application for Probate or Administration including Shs. cts. issue of grant ... ... ... ... ... ... 30 00

(2) On Oath for every executor administrator or surety ... 15 00

(3) On every security ... ... ... ... ... ... ... 30 00

Provided that the sum levied in respect of Fees 1, 2 and 3 shall not, in the aggregate, exceed 3 per cent. of the gross estate.

(4) On filing account ... ... ... ... ... ... ... 15 00

Provided that where the gross estate does not exceed Shs. 15,000 a fee of Shs. 5 only will be payable.

(5) Upon vouching account at the request of an interested party ... ... ... ... ... ... 30 00

To be paid by the requesting party.

(6) Commissioner for Oaths Fee on every affidavit—

For each person sworn or affirmed ... ... ... ... ... 3 00

(7) On lodging caveat ... ... ... ... ... ... ... 15 00

(8) Upon issuing warning to interested party of caveat each ... ... ... ... ... ... 3 00

(9) Service thereof on each party—

(a) within the township of the Court of issue ... ... 2 00

(b) without the township of the Court of issue ... ... 4 00

Provided that an additional fee of Shs. 2/- for service within the township of the Court of issue, or Shs. 4/- for service without the township of the Court of issue, as the case may be, shall be charged for any such service at the request of a party made within four days of the date on which such process is returnable.

(10) Drawing and serving summons upon the interested parties to hear directions of Court in respect of caveat each ... ... ... ... ... ... 3 00

(11) Hearing fee at trial of action ... ... ... ... ... ... 40 00
(12) Where the Court itself winds up an estate a fee shall be Shs. cts. payable at the rate of 2½ per cent. upon the total amount realised and 2½ per cent. upon the total amount distributed.

(13) Drawing notice of application, notice of grant and publishing same ........................................ 5 00

Publication charges in the *Official Gazette* to be paid by the applicant.

(14) For an official certified translation of any Will or other testamentary instrument.

   (a) For the first folio of 100 words .................................. 15 00

   (b) For each subsequent folio .................................. 7 50

  *Exemptions*—Wills or other testamentary writings in Arabic or Kiswahili.

(15) For certifying as correct a translation of a Will or other testamentary writing tendered by a party. Half fees as in Fee No. 14

  *Exemptions*—Wills or other testamentary writings in Arabic or Kiswahili.