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ADV. SHARITE

THE ADMINISTRATION
OF
ESTATES PROCLAMATION,
INTESTATE PROCLAMATION
&
THE LAW OF INHERITANCE ACT

1960 Vol II Laws of Basutoland

PROCLAMATION 19 OF 1935

ADMINISTRATION OF ESTATES

19 of 1935.
28 of 1938.
34 of 1946.
Cap. 65.

56 of 1955.

To make provision for the administration of the estates of deceased persons, minors and lunatics and of derelict estates and to regulate the rights of beneficiaries under mutual wills made by persons married in community of property.

[12th April, 1935]

1. This Proclamation may be cited as the Administration of Estates Proclamation. Short title.

2. In this Proclamation, unless inconsistent with the context— Interpretation.

"African" shall mean and include any person belonging to any of the aboriginal races or tribes of Africa south of the Equator;

"British Consular Court" shall mean any British Court having jurisdiction under an Order of His Majesty in Council, made in pursuance of the Foreign Jurisdiction Acts, 1843 to 1878, or any of them or any amendment thereof;

"Court" or "the Court" shall mean the High Court of Basutoland;

"curator" shall include every curator nominate, curator dative, and *curator bonis*, whether appointed by the Court or under the provisions of this or any other law;

"deed" shall mean any instrument in writing other than a will;

"immovable property" shall include every right or interest to and in any buildings and other fixtures erected within the Territory with the consent, express or implied, of the Government;

"letters of administration" shall include every document issued or a copy of every such document duly certified by any lawful and competent judicial or other public authority in any State under and by which document any person is authorised and empowered to act as the personal representative of any deceased person or as executor or administrator, either testamentary or dative, either of the whole estate of any deceased person which is legally situate in that State, or of so much of the estate so situate as consists of immovable, movable, real or personal property, as the case may be;

5. (1) The Master shall have his office at the seat of government of the Territory.

Master's office at seat of government.

(2) In such office shall be carried out to completion all such matters as immediately prior to the commencement of this Proclamation were in such office uncompleted, and every such uncompleted matter shall be completed as if this Proclamation had not been promulgated.

6. (1) Save as in this Proclamation is otherwise provided, all powers and rights heretofore exercisable and all duties to be performed by the Master shall continue to be so exercisable and performed by the Master and his successors in office.

Powers, duties and jurisdiction of Master.

(2) From the date of the taking effect of this Proclamation all the property and estate of every deceased person, minor, lunatic, person permanently absent from the Territory without a lawful representative therein and whose whereabouts is unknown, or person under curatorship, shall be administered under the supervision of the Master.

7. (1) The Master shall cause to be kept a register containing the names of—

Master to keep register of executors, tutors, curators and sureties.

- (a) every executor to whom letters of administration have been granted;
- (b) every surety for any executor;
- (c) every tutor and curator to whom any letters of confirmation have been granted; and
- (d) every surety for any such tutor or curator.

(2) Whenever an order for sequestration has, under any law in force in the Territory relating to insolvent estates, been lodged with the Master, or the estate of any debtor has been placed under assignment in accordance with any law in force in the Territory, he shall cause the said register to be examined and—

- (a) if an insolvent or such a debtor be the executor of an estate not previously administered, distributed, and finally settled the Master shall notify the fact in the *Gazette*;
- (b) if an insolvent or such a debtor be either a tutor or curator, the Master may take steps for the appointment of a tutor or curator dative in the place of that insolvent or debtor;
- (c) if an insolvent or such a debtor be a surety for any executor, tutor or curator, the Master may require that executor, tutor or curator to give additional security to his satisfaction, and if such additional security be not furnished within a reasonable time the Master or any person interested may apply to the Court for the removal of that executor, tutor or curator,

without in any way affecting the liability of that executor, tutor or curator, up to the time of his removal, or impairing the validity of any security, or releasing any surety or his estate.

Records of
Master's
office, etc.

8. (1) The Master shall preserve of record in his office all original wills, death notices, inventories, and liquidation, administration and distribution accounts lodged at his office under the provisions of this Proclamation or any prior law under which any such documents were customarily or were required to be lodged at the office of the Master or Orphan Master in the Territory.

(2) Any person may at any time during office hours inspect any such documents and make or obtain a copy thereof or an extract therefrom on payment of the fees prescribed in respect thereof by the Third Schedule to this Proclamation:

Provided that any person holding office under the Government of Basutoland may, in the course of his official duties, take a copy of or an extract from any such document without payment of any fee.

Master to
forward
duplicates
to District
Commissioner.

9. (1) The Master shall, as soon as may be, transmit the duplicate or copies certified by him of every account lodged with and accepted and filed by him, to the District Commissioner of the district (other than the district wherein the office of the Master is situate) in which the person to whose estate the account relates ordinarily resided at the time of his decease.

(2) Every such District Commissioner shall file every such duplicate or copy in his office, and any person may, at any time during office hours, inspect or obtain a copy of or an extract from any such duplicate or copy or any other document filed by the District Commissioner on payment of the fee which would be payable to the Master for the copy or extract, if the duplicate or copy were filed in the Master's office.

Appoint-
ment of ap-
praisers for
the valua-
tion of
estate and
property.

10. (1) The Master may from time to time appoint such and so many persons residing within the Territory as he thinks fit to be appraisers for the valuation of property, and revoke any appointment so made.

(2) Every such appraiser shall, in respect of every appraisal by him, be entitled to demand and receive a reasonable compensation, which shall be assessed according to a tariff of fees fixed by regulation, and shall be taxed by the Master.

Oath of
appraisers.

11. (1) Every person who is appointed an appraiser under this Proclamation shall take an oath before a District Officer or a Commis-

was lodged with the executor within the period mentioned in the *Gazette* or was known to him when he made the distribution, any loss sustained by that creditor in respect of his claim through the failure of the executor to make lawful distribution, but the executor shall be entitled at his own cost to recover from any person any amount paid to him in the course of the distribution which would not have been paid to him if a lawful distribution had been made.

(2) No creditor, whose claim was not lodged with the executor before the expiry of the period notified in the *Gazette* or before a distribution of the funds of the estate, shall be entitled in respect of his claim to demand restitution from any other creditor of any moneys paid to such other creditor after the expiry of the period aforesaid and in the course of such distribution on account of a valid claim against the estate.

Affidavit in support of claim.

50. (1) An executor may, if he think fit, require any person preferring a claim as a creditor against the estate to substantiate the claim by an affidavit setting forth the details of the claim with such particulars as the executor may reasonably require, or, with the consent of the Master, by examination on oath by or before him or by or before a District Officer nominated by him.

(2) An executor may refuse to recognise any such claim until the provisions of this section have been complied with.

(3) Any Court by which any such claim is adjudged in favour of a claimant may decline to grant the claimant his costs against the estate if that Court deem that the information given by the claimant to the executor was insufficient and that the executor acted with prudence and discretion in contesting the claim.

Taking over of estate by surviving spouse.

51. The Master may, if it appear to him that no person interested will be prejudiced thereby and if no provision be made in the will of the deceased to the contrary, authorise the executor, instead of realising the property of the deceased, to make over the same to the surviving spouse, at a valuation to be made by a sworn appraiser or by such person as the Master may approve:

Provided that no person having any lawful claim against the estate of the deceased spouse shall be delayed or defeated in obtaining payment of that claim by reason of anything in this section contained.

Sale of property out of hand.

52. If the Master, after due enquiry, be of opinion that it will be to the advantage of persons interested in an estate to sell out of hand instead of by public auction, any property belonging to that estate, and if no provision be made in the will of the deceased to the contrary, the Master may grant the necessary authority to the executor so to act.

(4) Any marriage officer or minister of religion who solemnises any such marriage unless there has first been delivered to him the certificate required by this section in respect of the parties to the marriage, shall, in addition to any other liability, be liable to such fine or, in default of payment, to such imprisonment as aforesaid.

57. It shall not be lawful for the survivor of two spouses who were married in community of property, not being an executor to whom letters of administration have been duly granted by the Master, to transfer or mortgage any immovable property belonging to the joint estate and registered in the name of such survivor, unless and until he has obtained a certificate from the Master authorising him to deal with that property, whether unconditionally or in the manner detailed in such certificate.

Survivor's rights to deal with communal property.

58. (1) Save as hereinafter provided, it shall be the duty of every executor, subject to the terms of the will, to transfer property to the person to whom it is bequeathed: Provided that if a usufructuary interest or other like limited interest in such property has been bequeathed to any person with a direction that after the expiry of such interest the property shall devolve upon some person uncertain, the executor shall, instead of transferring the property, transmit the title deeds to the registrar of deeds or other registration officer concerned, in order that the terms of the will or a reference thereto may, subject to the payment of transfer duty, if any, be endorsed against the said title deeds.

Bequests of immovable property.

(2) Whenever the Master is satisfied that it is impossible to transfer property as aforesaid without causing undue hardship, he may authorise the executor to transmit the titles to the registrar of deeds or other registration officer concerned in order that a note may be made on the said titles that the property has been bequeathed.

(3) Every executor who fails to use due diligence in complying with the provisions of this section, shall forfeit all claim to fees in respect of his administration of the estate.

59. It shall be the duty of the registrar of deeds or other registration officer aforesaid to whom the titles have been transmitted under the last preceding section to make all endorsements and to do all things necessary to give effect to the provisions of that section.

Endorsement on title deeds.

60. Any person in possession of a title deed required by an executor in order to comply with the provisions of the last preceding section, who refuses to deliver or unreasonably delays the delivery of such title deed to such executor, shall be liable to pay all reasonable costs to

Penalty for refusing to deliver title deeds to executor.

which the executor may be put in obtaining the order of a competent Court declaring him entitled to the possession of the said deed, and shall be liable in addition to such penalty, not exceeding one hundred rands, as such Court may impose; but the legal rights or position of such person shall not be affected by his delivery of such deed in terms of this section. Every executor shall, so soon as the said deed is no longer required for the purposes of complying with the provisions of the last preceding section, return it to the person from whom it was received, if, but for this section, such person would be entitled to possession thereof.

Endorsement of trusts against title deeds.

61. (1) Whenever a deceased person by his will directs that any of his property instead of being distributed amongst beneficiaries shall be administered by some person (hereinafter called the administrator) on their behalf, the executor shall, after payment of debts, deliver such of the property as is movable to the administrator and lodge the administrator's acquittance for the same with the Master; the executor shall further cause the terms of the will, or a reference thereto, in so far as those terms relate to the administration, to be endorsed by the registrar of deeds or other registration officer concerned against the title deeds of such of the property as is immovable and shall lodge with the Master the receipt of the administrator for the titles and a certificate from the said officer that the title deeds have been endorsed as aforesaid, and thereupon the administrator shall have full power to deal, in terms of the said will, with any of the deceased person's property.

(2) The said registrar of deeds or other registration officer shall do all things necessary to enable an executor to comply with the provisions of this section.

(3) The provisions of sub-sections (2), (3), (4) and (5) of section *thirty-nine* shall apply to an administrator.

Transfer of immovables out of estates.

62. (1) Every executor who desires to effect transfer of any immovable property out of an estate in pursuance of the terms of a will, shall lodge with the registrar of deeds a copy of the will of the deceased duly certified by the Master.

(2) If a copy of the will has already been lodged, a reference thereto will be deemed a sufficient compliance with this section.

(3) Every executor who desires to effect transfer of any immovable property in pursuance of a sale whether by public auction or private treaty shall lodge with such transfer a certificate under the hand of the Master to the effect that no objection to such transfer exists.

63. The High Commissioner may make rules regulating the application for and issue of copies of wills required for the purpose of the last preceding section and the fees to be paid in respect thereof.

Copies of wills.

64. (1) If upon the distribution under this Proclamation of an estate in due course it appear that any person who is a minor is entitled to an amount not exceeding six hundred rands, the executor with the concurrence of the Master, or the Master if this amount has been paid into his hands, may, if the executor or the Master (as the case may be) be satisfied that it will be to the benefit of the minor so to do, and, if the minor be domiciled in a country outside the Territory, remit the amount due to that minor to the Government of that country or to the lawful guardian of the minor within that country.

Minor's portion if domiciled in country outside the Territory.

(2) The executor shall produce proof in due course to the satisfaction of the Master that he has remitted any amount in accordance with this section.

(3) When any amount has been remitted under this section, the Master shall not be subject to any claims in respect thereof by any heir.

* 65. (1) The Master may dispense with the appointment of an executor in estates not exceeding two hundred rands in value and give directions as to the manner in which the same shall be administered and distributed.

Summary disposal of estate or appointment of executor dative by Master.

(2) In all cases in which it appears from the death notice or inventory lodged in respect of the estate of a deceased person and from such other information as the Master may demand that the value of the assets of the estate does not exceed six hundred rands, the Master may, in the case of an intestate estate, or in the case of a testate estate in which the executor testamentary may be unable or unwilling to act, summarily and without convening any meeting, appoint an executor dative to administer the estate of that deceased person.

66. In any case in which it appears that an estate does not exceed six hundred rands in value, the Master may, with due regard to the terms of the will, direct—

Lodging of claims and accounts in estates of small value.

(a) that the estate be administered within a less time than six months;

(b) that the advertisement calling upon creditors to lodge their claims be inserted once only in the *Gazette* and in a newspaper circulating in the district in which the deceased was ordinarily resident at the time of his death, or, if not resident

in the Territory at the time of his death, in a newspaper circulating in a district where the deceased owned property and that all claims be lodged within a period (not being less than fourteen days or more than three months) fixed by the Master and notified in the advertisement;

- (c) that the administration and distribution account in the estate be lodged within a period (not being less than fourteen days) after the last date for the sending in of claims.

Administration of foreign estates consisting only of shares.

67. Upon the death of any person who is neither ordinarily resident within the Territory nor the owner of any property therein, other than shares in a company chargeable with duty, the Master may summarily and without observance of the usual and customary forms and without requiring security or an account of the administration and distribution of the estate, sign and seal letters of administration produced to him under section *forty-one* or if no such letters be produced, the Master may appoint an executor dative to administer the estate of the deceased or dispense with such an appointment and direct the manner in which the estate shall be administered:

Provided that before the signing and sealing or appointment or direction—

- (a) evidence to the satisfaction of the Master is produced, that no person in the Territory will be prejudiced;
- (b) the duty payable in respect of the shares has been paid or secured to the satisfaction of the proper authority.

Administration and distribution accounts.

68. (1) Every executor shall administer and distribute the estate in respect of which he is appointed, according to law and the provisions of any valid will relating to that estate.

(2) As soon as may be after the expiration of the period notified in the *Gazette* in manner hereinbefore provided and not later than six months from the day on which the letters of administration were issued to him, or within such further time as the Master may, upon sufficient cause being shown, allow, the executor shall frame and lodge with the Master an account showing the administration and distribution of the estate up to the date when the account was lodged, together with a true copy of that account.

(3) If any such account be not the final account, it shall set forth all debts due to the estate and still outstanding and all property still unrealised and the reasons why the same have not been collected or realised, as the case may be.

(4) The executor shall from time to time, as the Master may direct, render periodical accounts of his administration until the estate be finally liquidated.

(5) Every executor's account shall lie open at the office of the Master, and where the deceased resided or carried on his principal business in any district other than the district where the office of the Master is situate, a duplicate thereof shall lie open at the office of the District Commissioner of that district, for inspection for not less than three ^{21 days} weeks by any person interested in the estate.

(6) The executor shall give due notice that the account is so open to inspection by advertisement in the *Gazette* and in a newspaper circulating in the district wherein the deceased resided or carried on his principal business and shall state in that notice the period during which and the place at which the account will lie open for inspection.

(7) The District Commissioner shall cause to be affixed in some public place in or about his office, a list of all such accounts as have been lodged in his office and the date on which each such account will be transmitted to the Master; and upon the expiry of the period allowed for inspection he shall endorse on each account his certificate that the account has lain open in his office for inspection in accordance with this section and shall transmit the account to the Master.

(8) Any person interested in the estate may at any time before the expiration of the period allowed for inspection lodge with the Master in writing any objection, with the reasons therefor, to that account.

(9) If the Master be of opinion that any such objection ought to be sustained, he shall direct the executor to amend the account or shall give such other directions as he may deem fit:

Provided that—

(a) any person aggrieved by any such direction of the Master may, within thirty days after the date of the Master's direction and after giving notice to the executor and to any person affected by the direction, apply by motion to the Court, for an order to set aside the direction, and the Court may make such order as it may think fit; and

(b) when any such direction affects the interests of a person who has not lodged such an objection, the account so amended shall again lie open for inspection in the manner and with the notice aforesaid, unless the person so affected consents in writing to the account being acted upon.

(10) When an account has been open to inspection and no objection has been lodged, or if any objection has been lodged and has not

been sustained or has been withdrawn or the person objecting has not applied to the Court within the time prescribed, the executor shall proceed to pay out the creditors and heirs and shall lodge with the Master the vouchers in support of the account.

(11) Upon the final and complete liquidation of the estate to the satisfaction of the Master, the executor shall then be entitled to obtain his discharge from the Master as such executor.

Remu-
neration of
executors.

69. (1) Every executor shall, in respect of his administration, distribution, and final settlement of any estate be entitled to receive out of the assets of the estate, or from any person who, as heir, legatee or creditor is entitled to the whole or any part of the estate, such remuneration as may have been fixed by the deceased by will or deed.

(2) If no such remuneration has been fixed the executor shall receive a fair and reasonable compensation which shall be assessed according to a tariff fixed by Notice in the *Gazette* and shall be taxed by the Master.

(3) If any executor fail to lodge the account of his administration and distribution of the estate as and when required by this Proclamation so to do and can give no lawful and sufficient excuse for such his failure, the Master may disallow the whole or any portion of the remuneration which the executor might otherwise have been entitled to receive in respect of his administration of the estate.

Indemnity
for ad-
ministration
and officials.

70. Save as in this section provided, no omission to render any such return as is by section *twenty-five* required, no rendering of an incomplete return, no transfer or mortgage bond in respect of any property passed by the registrar of deeds or other registration officer at the instance of a surviving spouse in contravention of this Proclamation, no error or omission in or in regard to any bond or the sufficiency of any surety or security accepted by the Master to secure the inheritance of minor children or the due and faithful administration of any property, and no release given by the Master from or cancellation of any such bond shall subject the Government, the Master or any registrar of deeds or other registration officer to any liability for damage sustained by any person in consequence of the omission, return, transfer, mortgage acceptance, release or cancellation. If any of such officers have not acted *bona fide* or have not exercised reasonable care and diligence the Government shall be liable for the damage aforesaid.

PART III

ESTATES OF MINORS AND ABSENT PERSONS

TUTORS AND CURATORS

71. It shall not be lawful for any person except--

(a) the father of a minor; or

(b) the mother of a minor whose father is dead or has abandoned the minor; or

(c) the mother of a minor to whom the custody of such minor has been given by a competent Court,

Appoint-
ment of
tutors to
minors.

by any will or other deed to nominate any tutor or tutors to administer and manage the estate or to take care of the person of that minor:

Provided that nothing in this section contained shall prevent any person who gives or bequeaths any property to any person, from nominating a curator or curators to administer and manage that property during the minority or during the insanity of the donee or legatee, in like manner and as fully in all respects as the same might lawfully have been done prior to the commencement of this Proclamation. All such curators shall be called curators nominate.

72. (1) A tutor nominated by a father or a mother in manner aforesaid to a minor child shall be called a tutor testamentary, whether that tutor has been nominated by will or by any other deed duly executed by the father or mother.

Tutors
testamentary.

(2) No tutor testamentary shall assume or enter upon the administration or management of the estate or property of any minor (except in so far as it may be necessary for the preservation and safe custody of the same) until letters of confirmation have been granted to him by the Master in the form "C" in the First Schedule to this Proclamation.

(3) Letters of confirmation granted to a tutor testamentary shall authorise him to administer the property of the minor wherever situate within the Territory.

73. (1) The Master shall, on application in writing made to him, grant letters of confirmation as tutor testamentary to every person who has, by a valid will or deed, been lawfully nominated and appointed tutor testamentary to a minor.

Letters of
confirmation.

(2) Whenever it comes to the knowledge of the Master that any person who has by any valid will or deed, been nominated tutor testamentary to a minor possessed of property has not applied for letters of confirmation, the Master shall, by writing, require that person to inform

him whether he is willing to act as such tutor testamentary and, if he consent so to act, the Master shall grant him letters of confirmation accordingly:

Provided that a father or mother shall not require letters of confirmation:

Provided further that letters of confirmation as tutor testamentary shall not in any case be granted to a person who is at the time incapacitated or disqualified by law from holding the office of tutor. The final proviso to section *thirty-two* shall *mutatis mutandis* apply to the appointment of tutors testamentary.

Letters of confirmation to curators nominate.

74. (1) No curator nominate shall assume or enter upon the administration or management of any estate or property except in so far as may be necessary for the preservation and safe custody of the same until letters of confirmation have been granted to him by the Master.

(2) To obtain the grant of such letters of confirmation, proceedings shall be taken by any such person and by the Master in like manner in all respects as is provided by the last preceding section as to the granting of letters of confirmation to tutors testamentary.

(3) Letters of confirmation to a curator nominate shall be in the form "D" in the First Schedule to this Proclamation.

(4) Letters of confirmation granted to a curator nominate shall authorise him to administer all property included in the deed pursuant to which he is appointed and therein committed to his care, wherever within the Territory any such property is situate.

Security by curators and tutors.

75. The Court may, on the application of the Master or of any relative or of any person having an interest in the administration of the property of any minor, make an order in every case in which, prior to the commencement of this Proclamation, any tutor testamentary might by law have been required to give security *rem pupilli salvam fore*, that letters of confirmation shall not be granted to any tutor testamentary or curator nominate as aforesaid until he has found security to the satisfaction of the Master. The Master shall allow the reasonable costs of finding security to be charged out of the estate unless otherwise ordered by the Court.

Appointment of tutors dative by Master.

76. (1) Whenever it comes to the knowledge of the Master that any estate or property within the Territory has devolved upon or come to any minor within the Territory, who is not at the time under the natural guardianship of his father or mother or under the guardianship of a tutor testamentary duly confirmed, or whose property is not under the care of a curator nominate or dative duly appointed, the Master shall,

unless he grant letters of confirmation as provided by sub-section (2) of section *seventy-three*, cause to be published in the *Gazette* and in such other manner (if any) as he thinks fit, a notice calling upon the relatives of the minor to attend at his office at a time therein specified to see letters of confirmation granted to the person or persons appointed by him tutor or tutors dative of the minor:

Provided that--

- (a) the Master may, if he deem it expedient, call upon the relatives of the minor to attend before a District Officer at a time and place appointed and state the objections (if any) to any of the next-of-kin or other person being appointed tutor dative or to propose some person or persons to be by the District Officer recommended to the Master as fit and proper for appointment by him as tutor or tutors dative. The Master shall in either event or if there be no attendance appoint such person or persons as he thinks fit and proper to be the tutor or tutors dative of the minor and shall grant to the person or persons appointed letters of confirmation in the form "C" in the First Schedule to this Proclamation unless he deems it necessary or expedient to postpone the appointment and to call another meeting;
- (b) if any such minor be not possessed of or have no claim to any property whatever or to any property, except such as has been given or bequeathed to him by a person who has duly appointed a curator or curators nominate to administer and manage it during his minority or except money paid over to and in the hands of the Master under section *fifty-four*, the Master need not, but may, take proceedings as aforesaid for the appointment of a tutor dative.
- (2) If the property of a minor which is not already being administered by a person having authority in that behalf do not exceed six hundred rands the Master may appoint a tutor summarily and without observing the formalities prescribed by this section.
- (3) Letters of confirmation granted to a tutor dative shall authorise him to administer the property of the minor wherever situate within the Territory.

77. (1) Nothing in this Proclamation contained shall prevent any tutor testamentary of any minor or curator nominate of any estate from assuming any other person as tutor of that minor or curator of that estate (as the case may be) by virtue of any power for that purpose committed to him by the will of, or any other deed duly executed by,

Assump-
tion under
will by
tutors
testament-
ary and
curators
nominate.

the person by whom the tutor testamentary or curator nominate was appointed:

Provided that no person shall be entitled or qualified to act as assumed tutor or curator unless, during the lifetime of the tutor testamentary or curator nominate, letters of confirmation have been granted to the assumed tutor or curator as such by the Master.

(2) Subject to the provisions of this Proclamation as to security, the Master shall grant such letters on production to him of the will or other deed by which the assumption of that tutor or curator is authorised and of the deed by which such tutor testamentary or curator nominate has assumed that person as tutor or curator, and wherever possible, the original letters of confirmation granted to that tutor or curator.

(3) Every provision of this Proclamation and of every other law applicable or relating to or affecting tutors or curators dative shall apply to every such tutor or curator so assumed, as the case may be.

Death, incapacity or removal of tutors and curators.

78. (a) If the tutor of any minor either testamentary or assumed or the curator of any estate either nominate or assumed, to whom letters of confirmation have been granted has died or become incapacitated to act as such or has been removed from his office by any competent Court, and for the guardianship of that minor or for the administration or management of that estate, as the case may be, no tutor or curator remains; or

(b) if there be not as many tutors, either testamentary or assumed, or curators nominate or assumed, as by the provisions of the will or deed by which they were appointed or permitted to be assumed are necessary to form a quorum of tutors or curators for the guardianship of that minor or for the administration and management of that estate; or

(c) if any tutor dative, after letters of confirmation have been granted to him die or become incapacitated or be removed in manner aforesaid;

then and in every such case proceedings for the appointment of a tutor dative in place of the person so dying or becoming incapacitated or removed shall be taken by the Master in manner provided by section *seventy-six* of this Proclamation.

Revocation of confirmation of tutors testamentary and curators nominate.

79. (1) Letters of confirmation granted to any person as tutor testamentary or as curator nominate may at any time be revoked and annulled—

(a) by the Court on proof to its satisfaction that the will or deed in respect of which those letters have been granted to that per-

- (c) the next of kin of the deceased; or in the default, absence, or minority of the next of kin;
- (d) the person who, at or immediately after the death, has the control of the premises where the deceased was living or staying at the time of his death;

shall, within fourteen days after the death, cause to be made, in the presence of two impartial witnesses being persons of good credit and repute, an inventory of all property known by the person making the inventory to have belonged to the deceased or to have been in his possession upon the said premises at the time of his death.

Every such inventory shall be subscribed by the person causing the same to be made and by the witnesses aforesaid.

22. Every person hereinbefore required to cause an inventory to be made shall, as soon as the same has been made as aforesaid, forthwith deliver or transmit it---

- (a) if the deceased was ordinarily resident at the time of his death in the district wherein the office of the Master is situate, to the Master; and
- (b) if the deceased was ordinarily resident at the time of his death in any other district, to the District Commissioner of that district.

Transmission of inventory to Master or District Commissioner.

In the case described in paragraph (b) the inventory shall be accompanied by a true copy thereof, and the District Commissioner shall cause that copy to be compared with the original, and, if necessary, corrected. He shall further authenticate that copy with his signature, file the same, and transmit the original inventory forthwith to the Master.

23. Notwithstanding anything to the contrary hereinbefore contained, the Court or the Master may, on sufficient cause appearing, at any time order that an inventory of any property belonging to any deceased person or to the joint estate of any deceased person and the surviving spouse, be taken by any person named in the order.

Inventory by order of the Court or Master.

24. Every person required by law to frame an inventory of the property of a deceased person shall include therein a specified list of all immovable property, registered in the name of the deceased or in which he knew the deceased had an interest at the date of his death, and shall insert, if possible, a reference to the title under which the deceased held such property, the date of the title, and full particulars concerning such interest.

Particulars required as to immovable property.

Master to furnish certain returns to registration officers of immovable property.

25. The Master shall forthwith after the receipt by him of the inventory and particulars mentioned in the last preceding section furnish to the registrar of deeds or other registration officer concerned a return—

- (a) giving the name of every deceased person who, being married in community of property, had at the date of death (as shown by the inventory filed as hereinbefore required) an interest in immovable property not registered in the name of such deceased person, the date of the death of such person and a reference to the will, if any;
- (b) embodying all material information in respect of that immovable property, and the interest of the deceased therein, contained either in the inventory lodged with the Master, or in the will (if any) of the deceased.

CUSTODY OF ESTATE PENDING ISSUE OF LETTERS OF ADMINISTRATION

Temporary custody of estates.

26. On the death of any person not being one of two spouses married in community of property—

- (a) the husband or wife of the deceased; or in default or absence of the husband or wife,
- (b) the child or children of the deceased; or in the default, absence, or minority of the child or children,
- (c) the next of kin of the deceased; or in the default, absence, or minority of the next of kin,
- (d) the person who at or immediately after the death has the control of the premises where the death occurred, and
- (e) the person who at or immediately after the death has possession of or control of any goods and effects of the deceased,

shall secure and take charge of all goods and effects of whatever description under his control which belonged to the deceased, and shall retain the same in his custody and possession until delivery thereof is demanded by the executor of the deceased or by any other person lawfully appointed by the Court or the Master to receive delivery for the purpose of the administration of the estate.

Temporary custody of estates of persons married in community.

27. Whenever one of two spouses married in community of property dies, the assets of the joint estate shall remain under the charge of the survivor until the appointment of a *curator bonis* or executor to administer the assets of such estate.

28. If any person---

(a) in any way dispose of any property of an estate of a deceased person except in so far as he may be authorised thereto by a competent Court or by the Master, or as may be necessary for the safe custody or preservation of any part of the estate or for providing a suitable funeral for the deceased or for the subsistence of the family or household of the deceased; or

(b) letters of administration having been granted to him in any way dispose of any property of the estate which is not contained in an inventory of that estate lodged with the Master under this Proclamation,

Liability of persons disposing of property in estates without authority, etc.

he shall thereupon become personally liable to pay to the creditors, legatees, and heirs of the deceased the full amount of their debts, legacies and inheritance, in so far as the estate is insufficient for the payment thereof: Provided that if he satisfy the Court that the value of the property so disposed of by him did not exceed a certain sum and that the disposal of the property was made in good faith, his liability shall be limited (but without prejudice to the right of any creditor, legatee or heir, to be paid the taxed costs of suit incurred by him in respect of the recovery from the person so liable of the debt, legacy or inheritance) to the said sum, after deduction therefrom of the amount (if any) which that person proves to have been the value of any part of the estate disposed of by him in a manner in which, and for a purpose for which, it ought by law to have been disposed of: Provided that nothing in this section contained shall be construed as modifying the provisions of the last preceding section whereby the survivor of two spouses married in community of property retains, as in that section provided, the charge of the joint estate.

29. Every person, not being the executor or curator of the estate of a deceased person duly appointed by the Master, who has in his possession or custody any property belonging to that estate, shall forthwith either deliver that property to the executor or curator duly appointed and authorised to administer the estate, or report the particulars of the property to the Master; and if any such person fail to do so or part with any such property to any person not authorised by the Master by letters of administration or other direction to receive the same, he shall, apart from any other liability he may incur thereby, be liable for all duties, taxes, or fees payable to the Government in respect of that property.

Duty of person in possession of assets of estate of deceased person.

Appoint-
ment of
*curator
bonis*.

30. (1) In all cases where the Master deems it expedient, he may appoint a *curator bonis* to take the custody and charge of any estate until letters of administration granted for the due administration thereof.

(2) Every such *curator bonis* may collect such debts and may sell or dispose of such perishable property belonging to the estate, wherever situate within the Territory, as the Master may specially authorise.

LETTERS OF ADMINISTRATION

Letters of
administra-
tion.

31. (1) The estates of all persons dying either testate or intestate shall be administered and distributed, according to law, under letters of administration granted by the Master in the form "B" in the First Schedule to this Proclamation. Such letters of administration shall be granted to the executors testamentary duly appointed by persons so dying or to such persons as, in default of executors testamentary, are appointed, as in this Proclamation described, executors dative to the persons so dying.

(2) Letters of administration shall authorise the executor to administer the estate wherever situate.

(3) Letters of administration may be issued to a woman, but shall not, without the consent in writing of her husband, be granted to a woman married in community of property, or to a woman married out of community of property when the marital power of the husband is not excluded.

Letters of
administra-
tion to
executors
appointed
by will.

32. In all cases in which any deceased person has by will duly appointed any person to be his executor the Master shall, upon the written application of the person so appointed, grant letters of administration to him as soon as the will has been registered in the office of the Master:

Provided that—

(a) if it appear to the Master; or

(b) if any person by writing lodged with the Master, objects—

that any will by virtue whereof any person claims to be the executor testamentary of any person deceased is not in law sufficient to warrant and support the claim, letters of administration may be refused by the Master—

(i) until the validity and legal effect of that will has been deter-
mined by the judgment of the Court; or

(ii) until the objection has been withdrawn by the person by whom the same was made; or

(iii) until the person objecting has had sufficient time to apply to the Court for an order restraining the issue of letters of administration:

Provided further that if the executor appointed by the will be a corporation the Master shall grant letters of administration to any officer of the corporation thereto nominated by the corporation, for whose acts as executor the corporation accepts liability, and upon his death, resignation or dismissal, to his successor being thereto nominated and guaranteed as aforesaid by the corporation:

Provided also that in case any such executor shall be or reside outside the Territory the Master may refuse to grant letters of administration to that executor until he finds sufficient security for his due and faithful administration of the estate and chooses *domicilium citandi et executandi* within the Territory:

Provided lastly that if it be brought to the notice of the Master that any such executor testamentary is insolvent or has assigned his estate the Master may refuse to grant letters of administration to that executor until he finds security as aforesaid, and if the estate of any such executor be placed under sequestration or assigned after he has been granted letters of administration, the Master may require him to find security as aforesaid. The Master may allow reasonable costs of finding security to be charged out of the estate.

33. (1) Nothing in this Proclamation contained shall prevent any executor testamentary from assuming any other person as executor of the testator under and by virtue of any power for that purpose to him committed by the testator by his will:

Assumption of executors under power contained in will.

Provided that no person shall be entitled or qualified to act as assumed executor unless letters of administration have, during the lifetime of the executor testamentary, been granted to him as such by the Master.

(2) Subject to the provisions of this Proclamation as to security the Master shall grant such letters of administration on production to him of the will by which the assumption of the executor is authorised and of the deed by which such executor testamentary has assumed that person as executor, and wherever possible, the original letters of administration granted to that executor.

(3) Every provision of this Proclamation and of every other law applicable or relating to or affecting executors shall be deemed and taken to be and shall apply and relate to and affect every such executor so assumed.

Proceedings on failure of nomination of executors or on death, incapacity or refusal to act.

34. (1) Whenever—

- (a) any person has died without having by any valid will nominated any person to be his executor;
- (b) any person duly nominated to be the executor of any deceased person has predeceased him or refuses or becomes incapacitated to act as executor or within such reasonable time as the Master deems sufficient fails to obtain letters of administration;

the Master shall cause to be published in the *Gazette* and in such other manner as he thinks fit a notice calling upon the surviving spouse (if any), the heirs, legatees, and creditors of the deceased to attend before him, or, if more expedient, before any District Officer, at a time and place to be specified in that notice, for the purpose of proposing some person or persons to be appointed by the Master or, as the case may be, recommended by that District Officer to the Master for appointment as executor dative.

(2) The Master shall appoint such person as he deems fit and proper to be executor dative of the estate of the deceased and shall grant letters of administration accordingly, unless it appear to him necessary or expedient to postpone the appointment and to publish another such notice as aforesaid.

Competition for the office of executor dative.

35. In every case in which there is competition for the office of executor dative, the surviving spouse, or, failing a surviving spouse, an heir or some of the heirs or, failing an heir, a creditor or creditors, or failing a creditor, a legatee or legatees or the nominee of any such person or class of person, shall be preferred by the Master to the office of executor:

Provided that nothing in this section contained shall prevent any one or more persons of the classes aforesaid from being conjoined in the said office with one or more of any other of those classes and if it appear to the Master, or to the Court on reviewing the appointment of the Master, that any good reason exists against the appointment of all or any of those persons or classes of persons as executor or executors any such person or class of persons may be passed by and some other fit and proper person or persons may by the Master or by the Court be appointed executor or executors.

Preference of minor's tutor for the appointments of executor.

36. If any heir, creditor, or legatee of a deceased person be a minor under the guardianship of a tutor duly appointed, that tutor shall be entitled to be preferred to the office of executor dative under the last preceding section in like manner in all respects as the minor, whose

tutor he is, would, if of full age, have been entitled to be preferred to that office under that section.

37. (1) Whenever there is no executor to administer an estate, the Master shall take proceedings in manner provided by section *thirty-four* for the appointment of an executor dative.

Circumstances in which proceedings to be taken for appointment of executors dative.

(2) Whenever there are not in office so many executors as by the will of the testator are required to form a quorum, the Master shall take proceedings for the appointment of so many executors dative as are necessary to complete the quorum.

(3) Whenever the testator has by will appointed two or more executors and any one of them fails to take out letters of administration or dies or no longer retains office and the Master is satisfied that, in the interest of the estate, an independent executor ought to be joined with the executor or executors testamentary, he may take proceedings for the appointment of an executor dative.

38. (1) Letters of administration granted to any person as executor testamentary may at all times be revoked and annulled—

Revocation of letters of administration by order of Court or by Master.

(a) by the Court, on proof to its satisfaction that the will, in respect of which those letters had been granted to that person, is null or has been revoked either wholly or in so far as it relates to the nomination of that executor, or that such person is not legally qualified for the appointment;

(b) by the Master, upon production to him of a will of later date than the will in respect of which those letters were granted, if application be made by an executor nominated in that later will, who is then capable, and qualified, and consents so to act.

(2) Letters of administration granted to any person as executor dative may at all times be revoked and annulled by the Master on production to him of any valid will by which any other person who is then legally capable, and qualified, and consents to act as executor has been legally nominated testamentary executor to the estate which the executor dative has been appointed to administer:

Provided that if the non-production of the will prior to letters of administration having been granted to the executor dative has been owing to the fault or negligence of the person therein nominated executor testamentary, the last mentioned executor shall be personally liable and may be compelled, at the instance of the Master or any person interested, to make good to the estate all expenses which have been

incurred in respect of and with reference to the appointment of the executor dative.

Security for
due
administra-
tion.

39. (1) Every executor dative, assumed executor, or curator dative, or *curator bonis* shall, before he is permitted to enter upon the administration of the estate, and thereafter as the Master may require, find security to the satisfaction of the Master for the due and faithful administration of the estate to which he has been appointed. *

(2) Every executor testamentary shall be under the like obligation of finding security, unless—

- (a) he be the parent, child, or surviving spouse of the deceased testator; or
- (b) he has been nominated by will executed before the commencement of this Proclamation and has not been directed by the will to find security; or
- (c) he has been nominated by will executed after the commencement of this Proclamation, and the testator has in such will directed the Master to dispense with such security; or
- (d) the Court shall otherwise direct.

(3) The Master shall allow the reasonable costs of finding security to be charged out of the estate.

(4) The security shall be for such amount as in the circumstances of each particular case appears to the Master reasonable.

(5) If any default be made in the administration of the estate, the Master may proceed to enforce the security and recover from the person in default or from his sureties the actual loss to the estate. A certificate under the hand of the Master shall be *prima facie* evidence of the amount of any such loss.

FOREIGN LETTERS OF ADMINISTRATION

Operation
of sections
41, 42 and
43 only with
regard to
letters
granted in
States
specially
proclaimed.

40. The provisions of sections *forty-one*, *forty-two* and *forty-three* of this Proclamation shall apply to all letters of administration at any time granted in any State as and from the date and during the period (if any) fixed by notice of the High Commissioner in the *Gazette*, declaring the said sections applicable to letters of administration granted in that State, and thereupon those provisions shall continue in force as regards letters of administration granted in that State either until any period so fixed as aforesaid or any extension thereof by like notice has expired or until a further like notice has been similarly published declaring that the said provisions shall no longer apply to letters of administration granted in that State.

41. Whenever letters of administration of the estate of a deceased person granted in any State are produced to and a copy thereof deposited with the Master by the person in whose favour those letters of administration have been granted or his duly authorised agent, those letters may be signed by the Master and sealed with his seal of office, and shall thereupon be of like force and effect and have as full operation in the Territory with respect to the whole estate therein situate, and the Master shall have the same control over the administration of the same, as if the said letters had been letters of administration granted by the Master:

Letters granted in other State on production to Master may be sealed, signed and given effect to in the Territory.

Provided that---

- (a) the Master shall not sign and seal letters of administration in any estate in regard to which letters have already been granted or signed and sealed within the Territory;
- (b) before any such letters are signed and sealed a certificate of death and a duly certified copy of the will (if any) of the deceased and an inventory of all property known to belong to him within the Territory shall be lodged with the Master, and the same stamps, fees of office, duties, and security shall be paid and given which would be required if the said letters had been letters dative granted by the Master and such executor shall choose *domicilium citandi et executandi* within the Territory;
- (c) if the Master refuse to sign and seal any such letters of administration so produced the person thereby authorised and empowered to act may, after notice to the Master, apply to the Court for relief and thereupon the Court shall make such order as it may think fit.

42. Letters of administration lawfully granted by any British Consular Court shall be deemed and taken to be granted in a State to which the provisions of section *forty-one* apply.

Letters granted by British Consular Courts recognised.

43. (1) A copy certified by the Master of the copy of any letters of administration deposited with him under the provisions of section *forty-one* shall be admitted in evidence in all proceedings within the Territory as if that certified copy were the original letters.

Evidence by copy of letters certified by Master and provision for Master's certificate of right to administer estates within the Territory.

(2) A certificate under the hand of the Master that he has, in accordance with the said provisions, signed and sealed any letters of administration authorising and empowering any person to act thereunder shall be admitted in all legal proceedings within the Territory as *prima facie* proof of the legal right and title of that person to ad-

minister the estate within the Territory of the deceased person named in the certificate.

DUTIES OF EXECUTORS

Executor's
duty to
make inven-
tory.

44. Every executor shall, as soon as letters of administration have been granted to him, make, subscribe and transmit to the Master, an inventory showing the value of all property belonging to the estate; and if he comes to know thereafter of any property which is not contained in any inventory lodged by him with the Master he shall make, subscribe, and transmit to the Master an additional inventory showing the value thereof and shall find such further security as the Master may direct under section *thirty-nine* of this Proclamation.

Appraisal
of assets.

45. If an executor fail, within such reasonable time as the Master may prescribe, to place a value upon the assets or any portion thereof or place such a value thereon as does not meet with the approval of the Master, the Master may cause the value of those assets to be appraised by an impartial person or persons and the value so ascertained shall be taken to be the true value of those assets for the purposes of this Proclamation.

Notice to
creditors to
lodge
claims.

46. Every executor shall, so soon as he has entered on the administration of the estate cause a notice to be published in the *Gazette* and in a newspaper circulating in the district in which the deceased ordinarily resided or if not resident in the Territory at the time of his death in a newspaper circulating in a district where the deceased owned property, calling upon all persons having claims against the deceased or his estate to lodge the same with that executor within such period from the date of the latest publication of the notice as is therein specified, not being less (save as in section *sixty-six* of this Proclamation is provided) than thirty days or more than three months, as is deemed by the executor proper in the particular circumstances of each case. All claims which would be capable of proof in case of the insolvency of the estate shall be deemed to be claims of creditors for the purposes of this Proclamation.

Suspension
of execu-
tion against
estate.

47. No person who has obtained the judgment of any Court against any deceased person in his lifetime or against his executor shall sue out or obtain any process in execution of that judgment before the expiration of the period notified in the *Gazette* in manner provided in section *forty-six* of this Proclamation, and no person shall thereafter within six

months after the grant of letters of administration obtain any process in execution of any such judgment without first obtaining an order of the Court.

48. (1) On the expiry of the period notified in the *Gazette* as provided in section *forty-six* the executor, before paying any debts of the deceased other than the reasonable expenses of the funeral and last illness, shall satisfy himself as to the solvency of the estate.

Executor's
duty to pay
debts.

(2) If the estate be solvent, the executor shall pay the creditors so soon as funds sufficient for that purpose have been realised out of the estate, but subject always to the provisions of section *sixty-eight*.

(3) (a) If the estate be insolvent and the Master be satisfied that the value of the assets does not exceed six hundred rands, the executor shall administer and distribute the same in such manner as the Master may direct, due regard being had to the rights of creditors.

(b) If the Master be not satisfied as aforesaid as to the value of the assets the executor shall immediately report, in writing, the position of the estate to the creditors, informing them that unless a majority in number and value of all the creditors instruct him in writing to surrender the estate, he will proceed to realise the estate and will distribute the same as if he were a trustee distributing an insolvent estate. Unless creditors to the number and value aforesaid instruct the executor within a reasonable time to surrender the estate he shall proceed so to realise and distribute the same, but nothing in this section contained shall prevent a creditor from applying to the Court for the sequestration of the estate as insolvent, and the Court may order the sequestration of the estate if satisfied that the sequestration will be for the benefit of the creditors generally.

For the purpose of this sub-section no creditor whose claim does not amount to sixty rands shall be reckoned in number and a creditor holding a specific security shall, in the same manner as is provided in the law relating to insolvency, place a value upon such security and shall only be reckoned in respect of the unsecured balance of his claim.

(c) An executor distributing an estate in pursuance of paragraph (b) of this sub-section shall advertise his account and the same shall be confirmed in like manner, and with like effect, as if it were an account framed by a trustee of an insolvent estate: Provided that every such account shall be confirmed by the Master and not by the Court.

49. (1) Any executor who makes a distribution except in accordance with the provisions of the last preceding section and section *sixty-eight* shall be personally liable to make good to every creditor whose claim

Liability of
executor.

sioner of Oaths that he will appraise all such estates or properties as may be submitted to his valuation according to the just, proper, and true valuation thereof and to the best of his skill and knowledge.

(2) The District Officer or other officer before whom any such oath has been taken shall forthwith transmit the same to the Master.

12. The Master is hereby authorised and required to charge and demand, receive and retain, or recover in respect of the acts, matters or things done or caused to be done by him or in his office, the fees specified in the tariff contained in the Third Schedule to this Proclamation, and shall collect every such fee save where it is otherwise provided in that Schedule by means of revenue stamps affixed to the documents evidencing the act, matter or thing in respect of which the fee is paid:

Master's fees.

Provided that nothing in this section contained shall affect the provisions of any law requiring any stamp to be used for any purpose in respect of any matter, except in so far as any alteration is expressly made in the tariff of fees in the said Third Schedule.

PART II

ESTATES OF DECEASED PERSONS

DEATH NOTICES

13. (1) Whenever any person dies within the Territory leaving therein any property or a will, the nearest relative or connection of the deceased at or near the place of death, or in default of any such near relative or connection, the person who at or immediately after the death has the control of the premises at which the death occurs, shall within fourteen days thereafter cause a notice of death to be framed in the form "A" in the First Schedule to this Proclamation, and shall cause that notice, signed by himself, to be delivered or transmitted—

Death notices.

(a) if the death occurs in the district wherein the office of the Master is situate, to the Master; or

(b) if the death occurs in any other district, to the District Commissioner of that district, in which case the notice shall be accompanied by a true copy thereof.

(2) Every District Commissioner to whom any such notice has been given shall—

(a) cause the duplicate or copy thereof to be examined and compared with the original and (if necessary) corrected; and

- (b) authenticate the duplicate or copy with his signature; and
- (c) file and register the same; and
- (d) forthwith transmit the original notice to the Master.

If it appear that the person signing the death notice was not present at the death, the Master may call for proof of the death.

(3) Whenever any person dies outside the Territory leaving any property or a will therein it shall be the duty of any person within the Territory having possession or control of any such property or such will to report the death to the Master and the Master shall take such steps as are necessary and practicable to obtain a correct death notice.

If death notice defective executor to furnish further information.

14. If the information in any death notice be defective or insufficient the Master may put such questions to the executor, at any time after appointment, as will enable the Master to obtain the information he requires, and every such executor shall, within a period fixed by the Master, transmit to him in writing answers to every such question to the best of that executor's ability.

WILLS

Deposit of wills with Master.

15. (1) Any person may lodge with the Master, either open or enclosed, any will executed by such person; and the Master shall cause to be kept a register of the name and address of every person so lodging a will and the date when it was lodged.

(2) Every will so lodged shall be accompanied by a duplicate or fair and true copy thereof which, together with the original, shall be kept in the custody of the said Master until the death of the person executing the will unless re-delivery thereof be demanded by him, or in his lifetime by his agent specially authorised for that purpose, and when any such will is re-delivered the said person or his said agent (as the case may be) shall sign a receipt for the same.

Duty of persons in possession of wills at time of testator's death or thereafter.

16. (1) Every person (other than the Master) who has a will in his possession at the time of or at any time after the death of the person executing the same shall forthwith transmit or deliver the will—

- (a) if it is in the district wherein the office of the Master is situate, to the Master;
- (b) if in any other district, to the District Commissioner of that district.

In the event mentioned in paragraph (a) the Master shall, if the deceased was at the time of his death ordinarily resident in a district

other than that wherein the office of the Master is situate, transmit an authenticated copy of the will to the District Commissioner of that district.

In the event mentioned in paragraph (b) the will shall be accompanied by a true copy thereof and the District Commissioner shall—

- (i) cause that copy to be compared with the original and, if necessary, corrected; and
- (ii) authenticate that copy with his signature; and
- (iii) transmit the original will forthwith to the Master; and
- (iv) if the deceased was ordinarily resident in such District Commissioner's district, file and register the said copy, or if the deceased was ordinarily resident in another district (other than that wherein the office of the Master is situate), transmit that copy to the District Commissioner of that district, who shall file and register the same.

* (2) Every notary public shall, at the expense of the estate and when required by the Master, transmit the original minute of any will passed before him to the Master and shall at the same time file a certified copy thereof in his protocol and endorse thereon that the original has been transmitted to the Master as required by this section.

17. The Resident Commissioner or Deputy Resident Commissioner and every District Commissioner who upon information taken on oath is satisfied that there is reason to suspect that any will is concealed in any place within his jurisdiction may, by warrant under his hand, cause every such place to be searched.

Warrants to search for concealed wills.

* 18. When any person on reasonable grounds is believed to be in possession of or to have under his control any will, and after the death of the testator fails to deliver or transmit the same as hereinbefore provided, the Master shall forthwith apply to the Court for an order that such person forthwith deliver that will to the officer to whom under section *sixteen* that will ought to have been transmitted or delivered.

Application by Master to the Court for an order on persons failing to give up wills.

19. Every document, being or purporting to be the will of any person, which has been lodged with, transmitted, or delivered to the Master as hereinbefore provided shall, after the death of the person who has executed such will, be registered by the Master in a register of estates, and the Master shall cause every such will which is closed to be opened for the purpose of keeping such a register:

Registration of wills, etc., at testator's death.

Provided that—

- (a) all questions as to the validity or legal effect of any such will shall, notwithstanding the registration thereof, be determined by the Court;
- (b) where the will has been lodged with the Master prior to the death of the person who has executed the same, the Master shall cause the duplicate or copy lodged with the will to be examined and compared with the original, and, if necessary, corrected; he shall further authenticate that duplicate or copy with his signature, and if the district in which the deceased, at the time of his death, ordinarily resided be not the district wherein the office of the Master is situate, he shall transmit the duplicate or copy so signed to the District Commissioner of that district and that District Commissioner shall cause the same to be filed and registered.

INVENTORIES

Inventory of estate in community by surviving spouse within six weeks of the death.

20. (1) When one of two spouses who have been married in community of property dies the survivor shall, within six weeks after the death, cause an inventory of all property which, at the time of the death, formed part of or belonged to the estate possessed in community between the predeceasing and surviving spouses, to be made in the presence of two impartial witnesses being persons of good credit and repute and in the presence of such persons having an interest in the distribution of the joint estate as heirs or legatees of the predeceased spouse as may attend.

(2) If any property not included in any such inventory has, after the death, been registered in the name of the surviving spouse, the surviving spouse shall, within fourteen days after the date of any such registration, lodge with the Master a supplementary inventory of all such property.

(3) Every such inventory shall be subscribed by the surviving spouse, the witnesses aforesaid, and the heirs or legatees so attending.

Inventory on the death of persons not married in community.

21. On the death of any person, not being one of two spouses married in community of property—

- (a) the wife or husband of the deceased; or in the default or absence of the wife or husband;
- (b) the child or children of the deceased; or in the default, absence, or minority of the child or children;

son is null or has been revoked either wholly or in so far as relates to the appointment of such person as tutor or curator or that such person was not legally qualified for the appointment; or

(b) by the Master upon production to him of a will or deed of later date than the will or deed in respect of which those letters were granted, if application be made by a tutor or curator nominated in that later will or deed who is capable and qualified so to act.

(2) Letters of confirmation granted to any person as tutor dative may at any time be revoked and annulled by the Master on production to him of any valid will or deed, by which any other person who is then legally capable and qualified and who consents to act as tutor has been legally nominated tutor testamentary of the minor concerned:

Provided that if the will or deed has not been produced prior to letters of confirmation having been granted to the tutor dative owing to the fault or negligence of the person therein appointed tutor testamentary, that person shall be personally liable for and may be compelled by the Master or any person related to the minor to pay to the minor's estate all expenses which have been incurred in respect of and with reference to the appointment of the tutor dative.

80. (1) If it comes to the knowledge of the Master that there is within the Territory any estate or property belonging to any person whose whereabouts is unknown and whom he believes to be permanently absent from the Territory without having a legal representative therein, the Master may cause to be published in the *Gazette* and in such other manner (if any) as he may think fit a notice calling on all whom it may concern to attend before him at the time and place therein specified to see letters of confirmation granted to some person to be appointed by him curator dative of the property of such absent person and the Master shall at the time and place so specified appoint by letters of appointment in the form "D" in the First Schedule to this Proclamation a fit and proper person to be such curator dative as aforesaid:

Curator dative to foreigner having no legal representative.

Provided that if the only property known by the Master to belong to the person believed to be absent consists of money payable to him by the executor of a deceased person or by the trustee of an insolvent estate the Master shall not take any such proceedings as aforesaid.

(2) Letters of appointment granted under this section to a curator dative shall authorise him to take custody and charge of all the said person's property wherever situate within the Territory.

Curators ad litem and bonis.

81. (1) Nothing in this chapter contained shall prevent the Court from appointing a *curator ad litem* to any person whenever and in the same manner in all respects as such an appointment might by law have been made by the Court if this Proclamation had not been promulgated.

(2) Whenever expedient the Master may appoint a *curator bonis* to take custody and charge of any property wherever situate within the Territory until, for the due administration and management of the same, letters of confirmation have been granted to some person as tutor testamentary or dative, or as curator nominate or dative, in manner hereinbefore provided.

Security by tutors and curators.

82. (1) Every tutor dative or assumed tutor and every curator dative and *curator bonis* shall, before he enters upon the administration of the estate or property concerned and thereafter as the Master may require, find security for the due and faithful administration and management of the estate or property, to the satisfaction of the Master and to such an amount as in the circumstances of each particular case appears to him reasonable.

(2) Every tutor testamentary and every curator nominate shall be under the like obligation of finding security unless—

- (a) he be the parent of the minor, or
- (b) he has been nominated by will executed before the commencement of this Proclamation and has not been directed by the will to find security, or
- (c) he has been nominated by will executed after the commencement of this Proclamation, and the testator has in such will directed the Master to dispense with such security, or
- (d) the Court shall otherwise direct.

(3) The provisions of sub-sections (3), (4) and (5) of section *thirty-nine* shall be deemed to be incorporated in this section.

Women as tutors or curators.

83. (1) The provisions of this Proclamation in regard to the election and appointment of tutors and curators shall apply to males and females.

(2) Letters of confirmation shall not, without the consent in writing of her husband, be granted to a woman married in community of property or to a woman married out of community of property when the marital power of the husband is not excluded.

Removal of insolvent tutors or curators.

84. Every tutor, either testamentary or dative, and every curator, either nominate or dative, whose estate has been sequestrated as insolvent or assigned under any law shall cease to exercise or hold office as

tutor or curator aforesaid unless, before the final sequestration or the assignment of such estate such tutor or curator has found security to the satisfaction of the Master for due and faithful performance of the duties and if no such security has been found such tutor or curator shall, so soon as the final order for the sequestration or assignment has been made, *ipso facto* be removed from office.

DUTIES OF TUTORS AND CURATORS

85. Every tutor and every curator shall make, sign, and transmit to the Master—

- (a) within thirty days after entering upon his office, an inventory of all property within the Territory belonging to the person under his guardianship or subject to his administration; and
- (b) as soon as he has knowledge that there is any other property so owned or subject to his administration, an additional inventory of such other property.

Inventories
by tutors
and cura-
tors.

and he shall find such further security as the Master may under section *eighty-two* of this Proclamation require of him.

86. Every tutor and, in respect of the property which he has been appointed to administer but not otherwise, every curator nominate or dative, whose appointment has been duly confirmed shall, in addition to and in so far as is consistent with the powers conferred and the duties and penalties imposed on him by this Proclamation possess all such powers and be subject to all such duties and penalties as before the commencement of this Proclamation a tutor testamentary would by the common law of the Territory have possessed and been subject to:

Curators'
duties and
liabilities
after con-
firmation.

Provided that—

- (a) nothing in this section contained shall be construed as conferring upon any curator nominate or dative any power or authority in respect of the maintenance, education or custody of the person of any minor, except in so far as the same has been specially conferred upon him by order of the Court;
- (b) every tutor testamentary and curator nominate shall in the discharge of his duties as such or in the administration of the estate and property under his guardianship (as the case may be) conform to and obey every lawful direction concerning the same which has been given in the will or deed by which the appointment was made or in any other document duly executed by the person who made that will or executed that deed.

Alienation
of property
by tutors or
curators.

87. No tutor and no curator (other than a tutor testamentary or a curator nominate duly authorised thereto by the will or deed under which he has been appointed) shall alienate or mortgage any immovable property belonging to a minor unless (the Court, or, when the Master is satisfied that the immovable property does not exceed six hundred rands in value, unless he authorise the alienation or mortgage of such property:

Provided that the Master may authorise the mortgage of immovable property belonging to a minor to an extent not exceeding six hundred rands, if satisfied that the mortgage is necessary for the preservation or improvement of the property or for the payment of expenses necessarily incurred in connection therewith, or for the maintenance or education of the minor.

Disposal of
moneys not
necessary
for pay-
ment of
debts.

88. Every tutor dative, every curator dative, and every *curator bonis* and, subject to the terms of the will or deed by which he was appointed, every tutor testamentary and every curator nominate shall forthwith pay over to the Master all moneys subject to his administration and not required for the immediate payment of the debts of the estate or the immediate maintenance of the person to whom the money belongs.

Account of
administra-
tion by
tutors and
curators.

89. (1) Every tutor and every curator shall, on or before the fifteenth day of February in every year, lodge with the Master a just, true, and exact account of his administration up to the thirty-first day of December last preceding, supported by vouchers, together with a true copy of that account.

(2) If he fail to lodge such an account in manner aforesaid and have no lawful and sufficient excuse for his failure, the Master may disallow the whole or any portion of the remuneration which the defaulting tutor or curator would otherwise have been entitled to receive in respect of his administration of the estate concerned during the year ending the said thirty-first day of December.

(3) Provided that the survivor of two spouses to whom the predeceasing spouse has by will or other lawful instrument entrusted the administration of their joint estate during the minority of their children shall not in any case be required to lodge any such annual account in manner aforesaid, anything to the contrary in this section notwithstanding.

Remunera-
tion of
tutors and
curators.

90. Every tutor, either testamentary or dative, and every curator, either nominate or dative, shall, in respect of his administration and management of any estate, be entitled to claim, receive, or retain out

of the assets of that estate a reasonable remuneration for his care and diligence in that administration and management. All such remuneration shall be assessed according to a tariff fixed by Notice in the *Gazette* and shall be taxed by the Master.

PART IV

THE GUARDIAN'S FUND

91. (1) The fund hereafter to be known in law as the Guardian's Fund, shall consist of— The Guardian's Fund.

- (a) any moneys to be paid to the Master, which, if this Proclamation had not been promulgated, would have been payable to him; and
- (b) any moneys to be paid to the Master under this or any other law or in pursuance of an order of Court, or accepted by the Master with the approval of the Resident Commissioner in trust for any person or persons known or unknown.

(2) Whenever any such money is received by the Master he shall open in the books of the Guardian's Fund an account with the person to whom or the estate to which that money belongs: Provided that if it be not known to whom any such money belongs or if, in the case of minor heirs, it be more convenient, the account may be opened in the name of the estate from which that money is derived.

(1)92. (1) Every person carrying on business in the Territory shall in the month of January in each year prepare and publish as hereinafter provided a detailed statement of all moneys amounting to two rands and upwards which were in his hands or in the hands of an agent on his behalf in the Territory on the thirty-first day of December last past and which were not his property or subject to any valid lien, but at the date of the publication of the said statement have remained unclaimed for a period of five years or more by the rightful owner. All unclaimed moneys to be paid into fund.

(2) That statement shall as far as practicable set forth the full name and last known address of each of the owners aforesaid and shall be signed by the person carrying on business as aforesaid or some responsible person on his behalf and shall be published in the *Gazette*.

(3) Every such person or his agent shall make an affidavit in the form "E" in the Second Schedule of this Proclamation and shall as soon as may be after the publication of the statement, transmit the same

(1) As amended by 56 of 1955.

together with the evidence of its publication as aforesaid and the said affidavit to the Master. If default be made in complying with any provision of this sub-section the statement shall be deemed not to have been published.

(4) After the expiration of three months from the date of such publication, all such moneys still remaining unclaimed shall, after deduction of the cost of publication apportioned as far as possible among the owners, be deposited forthwith in the Guardian's Fund; and, subject to the provisions of this Proclamation, all such unclaimed moneys shall be held by the Master for account of the rightful owners.

(5) If any person fail to publish the statement mentioned in this section or to pay into the Guardian's Fund any money which under this section ought so to be paid, as and when the same ought respectively to be published or paid, then every person having the custody or control of such moneys or, in the case of an association of persons other than a partnership, the secretary and every director thereof in the Territory, or in the case of a partnership, every member thereof in the Territory, shall be liable on conviction to a fine not exceeding one thousand rands or, in default of payment, to imprisonment for a period not exceeding twelve months.

(6) If default be made in publishing the statement aforesaid, or in paying such money into the Guardian's Fund within a period to be fixed by the Court, the person liable for default may be adjudged guilty of contempt of Court and dealt with accordingly.

Interest on moneys of minors or lunatics.

93.(2) Interest at the rate of three per cent per annum, or such other rate as the High Commissioner may from time to time by Notice in the *Gazette* determine, shall be allowed on the principal of every sum of money received by the Master for account of any minor or lunatic or, if the Resident Commissioner shall so direct, on account of any other person, from the first day of the month following that in which the money has been so received and until the amount becomes legally claimable.

Funds at disposal of Master.

94. The Master may from time to time withdraw any part of the working balances which are retained at his disposal under this Proclamation for the purpose of paying any amounts due and payable by the Guardian's Fund.

Ordinary payment from Guardian's Fund.

95. The Master shall pay any sum of money standing to the credit of any person or estate in the books of the Guardian's Fund to the person by law entitled to receive the same:

(2) As substituted by 28 of 1938.

Provided that the parent of a minor child having money deposited in the Guardian's Fund shall not be entitled to receive a greater amount of the interest due thereon than in the opinion of the Master has been reasonably necessary for the support and advancement in life of the minor, regard being had to his circumstances and conditions in life.

96. (1) If after careful enquiry it appear to the Master to be for the interest of any minor, the Master may apply for the maintenance, education or other benefit of that minor an amount which may be standing to his credit but this amount so applied shall not, without the sanction of the Court, exceed six hundred rands in all.

Extra-ordinary payment from Guardian's Fund.

(2) Whenever it appears to the Master that the interest upon any amount standing in the Guardian's Fund to the credit of a lunatic is not sufficient adequately to provide for the maintenance and treatment of the lunatic, the Master may apply to those purposes so much of the capital, as, regard being had to the circumstances of the lunatic and of the persons dependent on him, appears to the Master to be just and reasonable.

(3) The Master may, after consulting the guardian, withdraw from the said working balances any sum of money belonging to a minor for the purchase of immovable property, if he be satisfied that such purchase will be to the benefit of the minor.

(4) Nothing in this section contained shall authorise the Master to disregard the terms of any valid will or other deed.

97. The Master shall in the month of July in each year cause to be drawn up a list of all amounts standing in the books of the Guardian's Fund which are claimable and are unclaimed, shall cause the same to be inserted in the *Gazette*, and shall forthwith transmit two or more copies thereof to the Government Secretary who may cause the said list or any portion thereof to be published in such manner as he deems most expedient, in any country or countries to which any person or persons interested may be supposed to belong. In the advertisements all persons shall be invited to submit their claims to the Master: Provided that no amount which is less than one hundred rands need be advertised more often than once every five years.

Publication of lists of unclaimed moneys.

98. When any money which has been placed to the credit of any person or estate in the Guardian's Fund remains unclaimed by any person having a just and lawful right thereto for a period of fifty years from the date when the same was so placed to credit or in the case of a minor, from the date when he attains his majority, the claim shall

Forfeiture of unclaimed moneys.

lapse and the moneys shall be paid over to and appropriated as part of the general revenue of the Territory.

Investment
of
Guardian's
Fund.



99.⁽³⁾ The Master may from time to time invest on mortgage of immovable property, or in any stock, debentures or other securities which may be issued by the Government of Basutoland or of the Union of South Africa, and be charged upon the public revenue thereof, all such moneys standing to the credit of the Guardian's Fund as shall not be required to meet the current expenditure of the said Fund: Provided that no such investment shall be made by the Master without first consulting thereupon with two advisers, who shall be appointed from time to time for that purpose by the [Resident Commissioner] or, in the event of both or either of them refusing consent, unless he shall have applied to and obtained from the High Court an order of such Court authorising him to make such loan; and provided also that it shall not be lawful for any loan on mortgage to be made to or in favour of the master or either of his said advisers.

Payment
of money
to
revenue.

100.⁽⁴⁾ (a) The Master shall on the thirty-first day of January, 1956, pay over to the revenue of the Territory all moneys which had remained unclaimed by rightful owners for periods of five years or more and which had in consequence been paid into the Guardian's Fund . . . by reason of the provisions of sub-sections (7) and (8) of section *ninety-two*.⁽⁵⁾

(b) Moneys paid to the revenue of the Territory in terms of sub-section (a) of this section shall be appropriated as part of the general revenue of the Territory.

PART V

LEGAL PROCEEDINGS—OFFENCES AND PENALTIES

Suspension,
removal of
executors,
tutors and
curators.

* 101.⁽⁶⁾ Every executor, tutor or curator shall be liable to be suspended or removed from his office by order of the Court, if it be satisfied that by reason of his absence from the Territory, or other avocations, or failing health, or other sufficient cause, the interest of the estate under his care would be furthered by his suspension or removal: Provided

(3) As inserted by 28 of 1938.

(4) As enacted by section 3 of 56 of 1955. See following footnote.

(5) These provisions were repealed by 56 of 1955, but the section, though now obsolete, is printed in a modified form, as it contains the authority for past disposal of certain moneys.

(6) As inserted by 28 of 1938.

that the Court may, if it issue an order of suspension, substitute some fit and proper person to act during the suspension in the place of the person suspended, subject to such conditions as to the giving of security and the conduct and administration of the estate as the Court may deem it just to impose.

PROCEEDINGS AGAINST EXECUTORS, TUTORS AND CURATORS

102. (1) If any executor, tutor or curator fail to lodge his administration account with the Master as and when required by this Proclamation, the Master or any person having an interest in the administration may apply to the Court for an order directing the executor, tutor or curator to lodge his account, but before so applying, shall give to the executor, tutor or curator one month's notice in writing of his intention so to apply.

Failure to lodge administration account.

(2) An executor, tutor or curator who receives such a notice may apply to the Master for an extension of time wherein to lodge his account, and the Master may grant such extension as in the circumstances of the case he may think reasonable.

(3) If the Master refuse any such extension of time, and an application under sub-section (1) be made to the Court, and if upon that application the Court be of opinion that an extension of time ought to have been granted by the Master, the Master or other person by whom the application was made shall nevertheless be entitled to his costs if there was sufficient time before the notice of the application for the executor, tutor or curator in default to bring in review by the Court the refusal of the Master to extend the time.

(4) The costs adjudged to the Master or such other person as aforesaid, shall, unless otherwise ordered by the Court, be payable by the executor, tutor or curator in default *de bonis propriis*, and he shall not be entitled, unless so authorised by the Court, to charge the same to the estate under his administration.

103. Any executor, tutor, or curator who, without sufficient excuse, retains, and fails as and when required by this Proclamation, to pay over any moneys to the Master or for the benefit of a minor to any other person, shall be liable to forfeit at the instance of the Master or such other person for the benefit of the estate or (as the case may be) for the person to whom the money belongs interest upon the amount of the default at the rate of twelve per cent per annum as from the commencement of the default.


Failure to make due payments.

Payment
of Master's
costs from
Guardian's
Fund.

104. (1) Whenever any executor, tutor or curator is ordered to pay *de bonis propriis* the costs of any proceedings instituted by the Master, the Master may, if he find it impossible to recover the same from the executor, tutor or curator, pay or order payment of such costs from any property subject to the administration of the executor, tutor or curator in regard to which the proceedings were taken, or if there be no such property available, from the Guardian's Fund.

(2) All costs incurred by the Master in the ordinary course of his duties under this Proclamation or otherwise and not recoverable by him from any other source, may be drawn by him and paid out of the credit balance of the Guardian's Fund unless the Court in any case order that the costs be paid by the Master *de bonis propriis*.

(3) Nothing in this section contained shall be deemed to limit the power of the [Resident Commissioner] specially to authorise that any costs paid and incurred by the Master shall be refunded to him or met out of the Guardian's Fund.

 Procedure
in proceed-
ings taken
by Master.

105. Whenever by this Proclamation the Master is required or authorised to take civil proceedings against any executor, tutor or curator, he may proceed by way of application or motion and may when so proceeding report to the Court in writing the facts upon which he relies instead of stating them in an affidavit, anything to the contrary notwithstanding in any law or rule of Court.

Jurisdiction
of Court.

106. Every executor, tutor or curator wherever resident in the Territory, shall be obliged to answer the Master in any proceedings instituted under this Proclamation in the Court.

Reports to
Court by
Master.

107. Whenever in the course of his duties the Master finds it necessary to lay any facts before the Court otherwise than upon application thereto, as in section *one hundred and five* is provided, the Master may lay those facts before the Court by a report in writing transmitted through the Registrar of the Court. The Court may thereupon make such order as it thinks fit:

Provided that the Court may in every case, if it thinks fit, refer the report back to the Master and require the same to be presented upon formal application in Court.

Statement
of case to
Court by
Master.

108. Whenever any difference of opinion upon a question of law arises between the executor and the Master in the distribution of an estate and a minor is interested in the decision of that question, the Master and the executor may state a case in writing for determination

by the Court or by a Judge in chambers, and the determination of the Court or the Judge shall be binding upon the Master and the executor, without prejudice to the rights of other persons interested in the distribution.

109. Every appointment by the Master of an executor, tutor or curator, and every order or decision of or taxation by the Master under this Proclamation shall be subject to appeal to or review by the Court upon motion at the instance of any person aggrieved thereby and thereupon the Court may confirm, set aside, or vary the appointment, order, decision or taxation, as the case may be.

Review of
Master's
appoint-
ments.

OFFENCES AND PENALTIES

110. Any person who fails to comply with the provisions of sections *thirteen, sixteen, twenty, twenty-one, twenty-two, twenty-four, forty-four, eighty-five* or of sub-section (1) or (2) of section *one hundred and eighteen* of this Proclamation shall be liable on conviction to a fine not exceeding forty rands or, in default of payment thereof, to imprisonment for a period not exceeding three months, and every such punishment shall be in addition to any other punishment or penalty or forfeiture to which he may otherwise be liable, whether under this Proclamation or any other law or under the common law.

Penalties.

111. Any person by this Proclamation required to make or cause to be made an inventory of any estate, goods or effects who wilfully makes a false inventory thereof shall be liable on conviction to imprisonment for a period not exceeding five years or to a fine not exceeding one thousand rands or, in default of payment, to such imprisonment or to both such imprisonment and such fine.

False in-
ventories.

112. (1) Every surviving spouse who wilfully neglects to cause an inventory of the joint estate to be made in manner and within the period in this Proclamation provided, or knowingly omits to enter in that inventory any articles of property whatsoever shall in the distribution of that estate forfeit all right to and share in the property so omitted in the inventory.

Omission
by surviv-
ing spouse
to make
inventory.


(2) Every loss which has been caused by the destruction or deterioration of any such property so omitted in the inventory shall in the distribution of the estate fall upon and be borne by the surviving spouse solely and exclusively:

Payment
of Master's
costs from
Guardian's
Fund.

104. (1) Whenever any executor, tutor or curator is ordered to pay *de bonis propriis* the costs of any proceedings instituted by the Master, the Master may, if he find it impossible to recover the same from the executor, tutor or curator, pay or order payment of such costs from any property subject to the administration of the executor, tutor or curator in regard to which the proceedings were taken, or if there be no such property available, from the Guardian's Fund.

(2) All costs incurred by the Master in the ordinary course of his duties under this Proclamation or otherwise and not recoverable by him from any other source, may be drawn by him and paid out of the credit balance of the Guardian's Fund unless the Court in any case order that the costs be paid by the Master *de bonis propriis*.

(3) Nothing in this section contained shall be deemed to limit the power of the [Resident Commissioner] specially to authorise that any costs paid and incurred by the Master shall be refunded to him or met out of the Guardian's Fund.

 Procedure
in proceed-
ings taken
by Master.

105. Whenever by this Proclamation the Master is required or authorised to take civil proceedings against any executor, tutor or curator, he may proceed by way of application or motion and may when so proceeding report to the Court in writing the facts upon which he relies instead of stating them in an affidavit, anything to the contrary notwithstanding in any law or rule of Court.

Jurisdiction
of Court.

106. Every executor, tutor or curator wherever resident in the Territory, shall be obliged to answer the Master in any proceedings instituted under this Proclamation in the Court.

Reports to
Court by
Master.

107. Whenever in the course of his duties the Master finds it necessary to lay any facts before the Court otherwise than upon application thereto, as in section *one hundred and five* is provided, the Master may lay those facts before the Court by a report in writing transmitted through the Registrar of the Court. The Court may thereupon make such order as it thinks fit:

Provided that the Court may in every case, if it thinks fit, refer the report back to the Master and require the same to be presented upon formal application in Court.

Statement
of case to
Court by
Master.

108. Whenever any difference of opinion upon a question of law arises between the executor and the Master in the distribution of an estate and a minor is interested in the decision of that question, the Master and the executor may state a case in writing for determination

by the Court or by a Judge in chambers, and the determination of the Court or the Judge shall be binding upon the Master and the executor, without prejudice to the rights of other persons interested in the distribution.

109. Every appointment by the Master of an executor, tutor or curator, and every order or decision of or taxation by the Master under this Proclamation shall be subject to appeal to or review by the Court upon motion at the instance of any person aggrieved thereby and thereupon the Court may confirm, set aside, or vary the appointment, order, decision or taxation, as the case may be.

Review of
Master's
appoint-
ments.

OFFENCES AND PENALTIES

110. Any person who fails to comply with the provisions of sections *thirteen, sixteen, twenty, twenty-one, twenty-two, twenty-four, forty-four, eighty-five* or of sub-section (1) or (2) of section *one hundred and eighteen* of this Proclamation shall be liable on conviction to a fine not exceeding forty rands or, in default of payment thereof, to imprisonment for a period not exceeding three months, and every such punishment shall be in addition to any other punishment or penalty or forfeiture to which he may otherwise be liable, whether under this Proclamation or any other law or under the common law.

Penalties.

111. Any person by this Proclamation required to make or cause to be made an inventory of any estate, goods or effects who wilfully makes a false inventory thereof shall be liable on conviction to imprisonment for a period not exceeding five years or to a fine not exceeding one thousand rands or, in default of payment, to such imprisonment or to both such imprisonment and such fine.

False in-
ventories.

112. (1) Every surviving spouse who wilfully neglects to cause an inventory of the joint estate to be made in manner and within the period in this Proclamation provided, or knowingly omits to enter in that inventory any articles of property whatsoever shall in the distribution of that estate forfeit all right to and share in the property so omitted in the inventory.

Omission
by surviv-
ing spouse
to make
inventory.

(2) Every loss which has been caused by the destruction or deterioration of any such property so omitted in the inventory shall in the distribution of the estate fall upon and be borne by the surviving spouse solely and exclusively:

Provided that nothing in this section contained shall exempt any person, who wilfully or for any fraudulent purpose makes or causes to be made any false inventory of any such joint estate from any penalty or punishment otherwise by this Proclamation or any other law or by the common law provided for the offence of making false inventories.

Theft,
falsification,
etc., of
wills.

113. Any person who steals, wilfully destroys, conceals, falsifies or mutilates any will shall be liable on conviction to imprisonment for a period not exceeding seven years or to a fine not exceeding one thousand rands or, in default of payment, to such imprisonment or to both such imprisonment and such fine; and it shall not in any indictment or other form of charge of the offence be necessary to allege that the will is the property of any person or is of any value.

PART VI

GENERAL AND MISCELLANEOUS

Abolition
of power of
substitution
and surro-
gation.

114. From and after the commencement of this Proclamation it shall not be competent for any person appointed executor in any estate or tutor to any minor, to substitute or to surrogate any other person to act in his place.

Appoint-
ment of
Master by
will to be
void.

115. If any person by will or deed has nominated the Master to be—
(a) executor or administrator of an estate; or
(b) tutor testamentary of a minor; or
(c) curator nominate of any estate or property given or bequeathed by that person to a minor or lunatic,

the nomination shall have no effect, and proceedings shall be taken for the appointment of an executor dative, tutor dative, or curator dative (as the case may be) as if no such nomination of the Master had been made.

Reduction
of security.

116. When an executor, tutor or curator, having given security to the Master, has accounted to the Master by means of an account supported by vouchers, as by this Proclamation required, for any assets the value of which was taken into consideration by the Master when the security was assessed, the Master, upon his accepting and filing that account, may, if he be satisfied that the security thereafter remaining will be sufficient to cover the value of the assets remaining to be accounted for, reduce the amount of the security by any sum not

exceeding the value as it appeared to him when the security was assessed of the assets so brought to account.

10/25/35
Effect of
massing of
joint estate.

117. Where two spouses, married in community of property, have by their mutual will massed the whole or any specific portion of their joint estate, and disposed of it after the death of the survivor, conferring upon the latter a fiduciary, usufructuary or other limited interest therein, then upon the death of either of such spouses after the commencement of this Proclamation, adiation and the acceptance by the survivor of benefits under the will shall have the effect of conferring upon the heirs entitled to the said property, after the expiry of the said limited interest the same rights in respect of the survivor's half share of such property as they may by law possess in respect of the half share which belonged to the spouse who has first died.

118. (1) Unless exempted by the Master, every executor and every curator shall, so soon as he has funds of the estate over and above an amount of forty rands in hand, open an account with a bank within the Territory or, with the written consent of the Master, with a bank within the Union of South Africa, in the name of the estate and shall pay those funds and all other funds of the estate thereafter received by him into the said account not later than one day after the first day upon which it was reasonably possible for him to pay in the amount aforesaid. Every executor and every curator who fails to comply with the provisions of this section shall, at the instance of the Master or any person having an interest in the estate, pay to the estate interest at the rate of twelve per cent per annum on the amount so retained by him as from the commencement of the default. All cheques or orders for the payment of moneys out of such account shall truly express the cause of payment and the names of the persons in whose favour they are drawn.

Estate
banking
account.

(2) The Master may at all times require an executor or curator to furnish him with a bank statement or other sufficient evidence of the position of the said account.

Any executor or curator who fails to comply with the provisions of this section may be removed by the Court upon the application of the Master.

(3) If, upon the prosecution of an executor, administrator, trustee or curator for the theft or conversion of any property subject to his administration, it be proved that such property was in the possession of such executor, administrator, trustee or curator since his appointment as such, the onus shall lie upon him to prove, if the said property

was a sum of money, that the money was duly deposited in an account as hereinbefore required and, if he fail to do so, he shall be liable, if he be not convicted on the charge of theft or conversion, to a fine not exceeding double the amount of such sum or, in default of payment, to imprisonment for a period not exceeding six months, but such fine or such imprisonment shall not prevent the imposition of the penalty provided by this section.

Meetings before District Officer or other authorised officer.

119. Any meeting to be held before any District Officer pursuant to the provisions of this Proclamation may, in the absence of that District Officer, be held before any officer in the public service authorised by the Master.

Regulations.

120. The Chief Justice may make regulations not inconsistent with this Proclamation—

- (a) for the custody and preservation of the records, securities and valuable effects in the office of the Master;
- (b) as to the payment of money out of the working balances of the Guardian's Fund;
- (c) for the management and good conduct of the business of and the practice and procedure to be observed in the Master's office;
- (d) as to the remuneration to be paid to executors, curators, tutors and sworn appraisers,

and generally for the better carrying out of the objects and purposes of this Proclamation.

FIRST SCHEDULE

FORM "A"

DEATH NOTICE

Pursuant to the provisions contained in the Administration of Estates Proclamation

- 1. Name of deceased.....
- 2. Birthplace and nationality of the deceased.....
- 3. Names and addresses of the parents of the deceased

Father
Mother

4. Age of deceased..... years..... months.

5. Occupation in life of the deceased, or, if a woman of her husband

6. Ordinary place of residence of the deceased, or if a woman, of her husband

7. Married or unmarried, widower or widow.....

(a) Name of surviving spouse (if any), and whether married in community of property or not

(b) Name or names, and approximate date of death of pre-deceased spouses

(c) Place of last marriage..... on..... 19.....

8. The day of the decease..... on..... 19.....

9. Where the person died.....

House
Town or place.....
District

10. Names of children of deceased, and whether majors or minors

State separately the children born of different marriages, and give the date of birth of each minor. Names must be written out in full. If there are no children and either or both parents are dead, then give the names and addresses of the brothers and sisters of deceased

11. Has the deceased left any movable property?.....

12. Has the deceased left any immovable property?.....

13. Is it estimated that the estate exceeds R600 in value?.....

14. Has the deceased left a will?.....

Dated at..... the..... day of..... 19.....

(Signature).....

(State in what capacity and whether at the time at or near the place of death.)

This notice must be filed up and signed by *the nearest relative or connection of the deceased* who shall at the time be at or near the place of death—or in the absence of such near relative or connection, by the person who at or immediately after the death shall have the chief charge of the house in or the place in which the death occurred and must be sent either to the Master or, if the death occurred in a district other than that in which the office of the Master is situate, to the District Commissioner of the district, in duplicate, within fourteen days of the death.

FORM "B"

LETTERS OF ADMINISTRATION

These are to certify that A. B. of has been duly appointed the executor testamentary (or dative, as the case may be) and is hereby authorised as such to administer the estate of the late C. D. who died at on the

.....
Master of the High Court.

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

FORM "C"

LETTERS OF CONFIRMATION OF TUTORS

These are to certify that A. B. of has been duly appointed and is hereby authorised as such to act as the tutor testamentary (or dative, as the case may be) of C. D., minor child of the late E. F.....

.....
Master of the High Court.

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

FORM "D"

LETTERS OF CONFIRMATION OF CURATORS

These are to certify that A. B. of has been duly appointed and is hereby authorised to act as the curator nominate of the estate given (or bequeathed, as the case may be) to C. D. by G. H. (Here describe the deed of gift or bequest by its date or otherwise) or, as the case may be, as the curator dative of the estate of C. D.

..... Master of the High Court.

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

SECOND SCHEDULE

FORM "E"

I,, of (state capacity of deponent)..... make oath and say that the return of unclaimed moneys in the hands of under the provisions of the Administration of Estates Proclamation, section ninety-two, in the Gazette dated the day of 19.... subscribed by me and published and complete return as required by the said Proclamation; and that during the year ending the thirty-first day of December now last past no unclaimed moneys have been transferred by or on behalf of the said out of Basutoland or placed to any suspense or other account with a view to evading the provisions of this Proclamation and that all amounts which ought to be included in the said return are duly included therein.

Sworn at this day of 19.. Before me,

..... Commissioner of Oaths.

THIRD SCHEDULE

TARIFF OF FEES

1. On all estates of deceased persons or estates under curatorship (except estates under the charge of a *curator bonis* pending the appointment of an executor) the gross value of which—

(a) exceeds R200, but does not exceed R800	R2.00
(b) exceeds R800, for every R200 or part thereof	R0.50
subject to a maximum fee	R20.00
to be affixed to the liquidation account;	
(c) does not exceed R200 where administration takes place, a fee in the discretion of the Master, not exceeding	R2.00
to be affixed to the Inventory.	

Where the deceased is one of two spouses married in community of property the above fees shall be assessed upon one-half of the gross assets of such community.

2. The following fees shall be payable by means of revenue stamps in respect of the documents or services mentioned:

(a) Taxing the remuneration of executors, tutors, curators, and sworn appraisers upon every two rands or fraction thereof of the taxed amount	R0.10
(b) For Master's reports, a fee in the discretion of the Master from	R1.00
(c) For extracts or copies of documents made or certified in the office of the Master for the first one hundred words	R0.20
for each subsequent one hundred words or fraction thereof	R0.10
(d) For binding the records of any one estate according to size thereof, a fee in the discretion of the Master from R0.70 to	R3.00
(e) For every letter of confirmation or certificate of confirmation of any curator, trustee or tutor	R1.00
(f) For every certificate under the hand of the Master in respect of which no other fee is specially provided in this tariff	R0.50
(g) For the custody of any will during the testator's lifetime	R1.00
(h) For the inspection of the records of or information concerning any one estate (except in the case of the executor or curator of such estate or the lawful agent)	R0.20

(i) Upon all unclaimed moneys paid into the hands of the Master pursuant to section *ninety-two* of this Proclamation or for account of absent or unknown creditors of any estate or for account of absent or unknown creditors or contributories of any company, a commission upon the amount paid in of 5 per cent payable in cash, which shall be deducted from the unclaimed moneys so paid into the hands of the Master.

pk

HIGH COMMISSIONER'S NOTICE 163 OF 1946

REMUNERATION OF SWORN APPRAISERS, EXECUTORS, TUTORS AND CURATORS 163 of 1946.

[Under sections 10 (2), 69 (2) and 90]

[22nd July, 1946]

TARIFF OF REMUNERATION OF SWORN APPRAISERS

Every sworn appraiser is entitled to demand and receive in respect of every appraisement made by him a reasonable compensation to be assessed and taxed by the Master of the High Court according to the following tariff, provided that the Master may, at his discretion, authorise a variation from the tariff in special instances if he shall see fit—

1. Fees for Appraisement

(a) *Ad valorem* tariff.

(i) valuation of R1,000 or less	R4.00
(ii) valuations of R1,001 up to including R2,000	R6.00
(iii) valuations over R2,000 up to and including R20,000	R6.00 for the first R2,000. R3.00 per R2,000 or part thereof thereafter.

- | | | |
|--|--------|--|
| (iv) valuations over R20,000 up to and including R30,000 | | R6.00 for the first R2,000.
R3.00 per R2,000 for the next R18,000.
R1.50 per R2,000 or part thereof thereafter. |
| (v) valuations over R30,000 up to and including R200,000 | | R6.00 for the first R2,000.
R3.00 per R2,000 for the next R18,000.
R1.50 per R2,000 for the next R18,000.
R1.00 per R2,000 or part thereof thereafter |
| (vi) valuation over R200,000—the fee to be subject to the provisions laid down in section (v) above in respect of the first R200,000, and thereafter to be determined by the Master at his discretion; | | or |
| (b) time basis tariff. | | |
| R2.10 for every hour, or part of an hour, during which time the appraiser is actually engaged upon making, preparing and compiling one continuous appraisalment. | | |

2. Subsistence and Transport.

In addition to the fees for appraisalment, as set out above, the following expenses shall be allowed in all cases in which the appraise-

ment is made at a place more than one mile from the place of business of the appraiser—

- (a) when own conveyance is used R0.10 per mile:
- (b) when public transport is used actual fare paid
- (c) when conveyance is hired actual cost
- (d) where a journey is undertaken for the purpose of appraising property belonging to several owners, the expenses of one journey only may be charged, and should be apportioned to the several owners *pro rata*.

When client provides suitable transport, no travelling fees may be charged by the appraiser.

TARIFF OF REMUNERATION OF EXECUTORS, TUTORS AND CURATORS

The remuneration of executors, tutors and curators will be assessed and taxed by the Master according to the following tariff, provided that the Master may, in his discretion, authorise a variation from this tariff in special cases if he shall see fit—

Upon the proceeds of movables sold, promissory notes, book debts, interest and house rent collected, or other income: five per cent.

Upon the proceeds of immovables sold, life policies and bonds recovered, shares and other securities realised, and movables taken over at a valuation or specially bequeathed: two and one half per cent.

Upon the immovables taken over at a valuation or specially bequeathed: one and one quarter per cent.

Upon cash found in the estate or in the bank: one per cent.

HIGH COMMISSIONER'S NOTICE 46 OF 1936

ADMINISTRATION OF ESTATES

46 of 1936.

(Under section forty)

[11th March, 1936]

The provisions of sections *forty-one* and *forty-three* of the Administration of Estates Proclamation shall apply to probates and letters of

administration at any time granted in Great Britain and Northern Ireland, any of His Majesty's self-governing Dominions, any of His Majesty's Colonies other than Basutoland and any British possession, protectorate, protected state or mandated territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty.

ACT 26 OF 1873

LAW OF INHERITANCE

26 of 1873.
23 of 1874.

Amending the law as to inheritance, repealing the Lex Hac Edictali, and removing certain restrictions on the freedom of disposition of property by last will and testament.

1. This Act may be cited as the Law of Inheritance Act.

Short title.

[29th May, 1884]

PART I

FALCIDIAN AND TREBELLIANIC LAWS AND LEX HAC EDICTALI

26 of 1873.

2. In no case shall any heir of anyone dying after the taking effect of this Part be entitled to deduct out of the estate of the person so dying any portion under or by virtue of the laws known respectively as the *Falcidian* and the *Trebellianic* laws, which, but for such laws respectively, such heir would not be entitled to claim or deduct.

Heir not entitled to deduct any portion under *Falcidian* and *Trebellianic* laws.

3. From and after the taking effect of this Part the sixth law of the ninth title of the fifth book of the Codes of Justinian, commencing with the words *Hac Edictali*, and commonly called or known as the Law or *Lex Hac Edictali*, shall be and the same is hereby repealed.

Lex Hac Edictali repealed.

PART II

GENERAL

23 of 1874.

4. No legitimate portion shall be claimable of right by anyone out of the estate of any person who shall die after the taking effect of this Part.

No legitimate portion can be claimed of right.

* 5. Every person competent to make a will shall have full power by any will executed after the taking effect of this Part to disinherit or omit to mention any child, parent, relative or descendant without assigning any reason for such disinheritance or omission, any law, usage or custom now or heretofore in force in Basutoland notwithstanding: and no such will as aforesaid shall be liable to be set aside as invalid,

Persons making will may disinherit any child, etc., without assigning reasons.

either wholly or in part, by reason of such disinheritance or omission as aforesaid.

Existing laws of inheritance *ab intestato* to remain in force.

6. Nothing in this Part contained shall affect or alter the laws of inheritance *ab intestato* at present in force in Basutoland.

Existing laws of community of property to remain in force.

7. Nothing in this Part shall extend to or alter or affect the laws of Basutoland regarding community of property between spouses, when not excluded by antenuptial contract.

PROCLAMATION 2 OF 1953

INTESTATE SUCCESSION

2 of 1953.

To amend the law relating to intestate succession.

[23rd January, 1953]

X 1. (1) Subject to the provisions of section *three* the surviving spouse of every person who after the commencement of this Proclamation dies either wholly or partly intestate is hereby declared to be an intestate heir of the deceased spouse according to the following rules: Amendment
of intestacy
law.

- (a) if the spouses were married in community of property and if the deceased spouse leaves any descendant who is entitled to succeed *ab intestato*, the surviving spouse shall succeed to the extent of a child's share or to so much as, together with the surviving spouse's share in the joint estate, does not exceed one thousand two hundred rands in value (whichever is the greater);
- (b) if the spouses were married out of community of property and if the deceased spouse leaves any descendant who is entitled to succeed *ab intestato*, the surviving spouse shall succeed to the extent of a child's share or to so much as does not exceed one thousand two hundred rands in value (whichever is the greater);
- (c) if the spouses were married either in or out of community of property and the deceased spouse leaves no descendant who is entitled to succeed *ab intestato* but leaves a parent or a brother or sister (whether of the full or half blood) who is entitled so to succeed, the surviving spouse shall succeed to the extent of a half share or to so much as does not exceed one thousand two hundred rands in value (whichever is the greater);
- (d) in any case not covered by paragraphs (a), (b) or (c), the surviving spouse shall be the sole intestate heir.

(2) For the purposes of this Proclamation any relationship by adoption under the provisions of the Basutoland Adoption of Children Proclamation,⁽¹⁾ or of any other law governing adoption of children shall be equivalent to blood relationship.

(1) Proc. 62 of 1952—Title VIII.

Exemption
from suc-
cession
duty.

2. Paragraph (a) of section *sixteen* of the Death Duties Proclamation⁽²⁾ shall apply to any succession accruing to a surviving spouse under the provisions of this Proclamation.

Saving.

3. This Proclamation shall not apply to the succession to any African unless the estate of such African is required to be administered in accordance with the provisions of the Administration of Estates Proclamation⁽³⁾ by virtue of the proviso to paragraph (b) of section *three* of that Proclamation.

Short title.

4. This Proclamation may be cited as the Intestate Succession Proclamation.

⁽²⁾ Proc. 20 of 1935—Title XV.

⁽³⁾ Proc. 15 of 1935—*supra*.