

CHAPTER XXXVIII

TESTAMENTARY ACTIONS

[Chapter XXXVIII subs by s 4 of Act 14 of 1993.]

516. Deposit of the Will of deceased.

When any person shall die leaving a Will in Sri Lanka, the person in of whose keeping or custody it shall have been deposited, or who shall find such Will after the testator's death, shall produce the same to the District Court of the district in which such depository or finder resides, or to the District Court of the district in which the testator shall have died, as soon as reasonably may be after the testator's death. And he shall also make oath or affirmation, or produce an affidavit (Form No. 81, First Schedule) verifying the time and place of death and stating (if such is the fact) that the testator has left property within the jurisdiction of that or any other, and in that event what, Court, and the nature and value of such property; or, if such is the fact, that such testator has left no property in Sri Lanka.

The Will so produce shall be numbered and initialed by the Probate Officer and deposited and kept in the record room of the District Court.

[S 516 subs by s 4 of Act 14 of 1993.]

517. Application for probate or administration.

(1) When any person shall die leaving a Will under or by virtue of which any property in Sri Lanka is in any way affected, any person appointed executor therein may apply to the District Court of the district within which he resides, or within which the testator resided at the time of his death, or within which any land belonging to the testator's estate is situate, within the time limit and in the manner specified in section 524, to have the Will proved and to have probate thereof granted to him; any person interested, either by virtue of the Will or otherwise, in having the property of the testator administered, may also apply to such Court to have the Will proved and to obtain grant to himself of administration of the estate with copy of the Will annexed.

(2) If any person who would be entitled to administration is absent from Sri Lanka a grant of letters of administration with or without the Will annexed, as the case may require, may be made to the duly constituted Attorney of such person.

[S 517 subs by s 4 of Act 14 of 1993.]

518. Probate or administration compulsory when there is a Will.

In every case where a Will is deposited in Court after the coming into operation of this Chapter, and no application has been made by any person to have the Will proved and probate granted in respect thereof, the Court shall in accordance with the procedure set out in respect of the grant of probate or letters of administration on application made thereto, proceed to grant probate of the Will, to the executor or executors named in such Will or letters of administration with or without the Will annexed, as the case may require, to some person who by the provisions of the last preceding section is competent to apply for the same, or to some other person who in the opinion of the Court, by reason of consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, is a proper person to be appointed administrator and in every such case letters of administration may be limited or not in manner hereinafter provided, as the Court thinks fit.

[S 518 subs by s 4 of Act 14 of 1993.]

519. When Public Trustee may be appointed.

Where there is no person fit and proper in the opinion of the Court to be appointed administrator in the manner provided, in the last preceding section or no such person is willing to be so appointed, and not in any other case, the Court shall appoint the Public Trustee as administrator.

[S 519 subs by s 4 of Act 14 of 1993.]

520. Security.

In every case in which it is found necessary, whether by reason of such executor as aforesaid not applying for probate, or by reason of there being no executor resident in Sri Lanka competent and willing to act, or by reason of no person who is competent under section 517 to apply for letters of administration, so applying, that any such person as is mentioned, in section 518 should be appointed administrator, the Court shall take from such person security for the due administration of the estate, and shall for this purpose require such person to enter into a Bond with two good and sufficient sureties in Form No. 90 in the First Schedule, for the due administration of the deceased person's property, and it shall not in any case be competent for the Court to dispense with such security.

[S 520 subs by s 4 of Act 14 of 1993.]

521. Application for administration by the Public Trustee.

(1) Whenever the Public Trustee applies for letters of administration, it shall be sufficient if the petition presented for the grant of such letters states—

- (a) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner;
- (b) the names and addresses of the heirs of the deceased, if known;
- (c) the full and true particulars of the property left by the deceased as far as he has been able to ascertain the same;
- (d) particulars of the liabilities of the estate, if known.

(2) The Public Trustee shall not be required to file accounts of the property of the deceased unless the Court otherwise directs.

[S 521 subs by s 4 of Act 14 of 1993.]

522. Duties of Public Trustee in administering estates.

Whenever the Public Trustee has obtained probate in respect of a Will or grant of letters of administration in respect of the estate of a deceased person, he shall as far as practicable, comply with the provisions of this Chapter relating to the administration of estates:

Provided that the Public Trustee shall not be required—

- (a) to take any oath as executor or administrator;
- (b) to furnish any bond or security, but shall be subject to the same liability and dues as if he had given such bond or security;
- (c) to affix stamps on any document at or about the time of the making of such document; but shall eventually make such payment as required by the Stamp Ordinance;
- (d) unless the Court otherwise directs, to tender final accounts.

[S 522 subs by s 4 of Act 14 of 1993.]

523. To whom grant should be made.

In the case of a conflict of claims to have the Will proved and probate or grant of administration issued, the claim of an executor or his Attorney shall be preferred to that of all others, and the claim of a creditor shall be postponed to the claim of a residuary legatee or devisee under the Will. And in the like case of a conflict of claims for grant of administration where there is intestacy, the claim of the widow or widower shall be preferred to all others, and the claim of an heir to that of a creditor:

Provided, however, that the Court may for good cause supersede the claim of the widow or widower.

[S 523 subs by s 4 of Act 14 of 1993.]

524. Mode of application and proof in case of a Will.

(1) Every application to the District Court to have the Will of a deceased person proved, shall be made within a period of three months from the date of finding of the Will. and shall be made by way of petition and affidavit and such petition shall set out in numbered paragraphs—

(a) the fact of the making of the Will;

(b) the details and the situation of the deceased's property;

(bb) the heirs of the deceased to the best of the petitioner's knowledge;

[S 524(1)(bb) ins by s 2(1) of Act 38 of 1998.]

(c) the grounds upon which the petitioner is entitled to have the Will proved; and

(d) the character in which the petitioner claims (whether as creditor, executor, administrator, residuary legatee, legatee heir or devisee).

[S 524(1) subs by s 4 of Act 14 of 1993.]

(2) If the Will is not already deposited in the District Court in which the application is made, it must either be appended to the petition, or must be brought into Court and identified by affidavit, with the Will as an exhibit thereto, or by parol testimony at the time the application is made.

[S 524(2) subs by s 4 of Act 14 of 1993.]

(3) Every person making or intending to make, an application to a District Court under this section to have the Will of a deceased person proved, which Will is deposited in another District Court, is entitled to procure the latter Court to transmit the said Will to the Court to which application is to be made, for the purpose of such application. Also the application must be supported by sufficient evidence either in the shape of affidavits of facts, with the Will as an exhibit thereto, or of oral testimony, proving that the Will was duly executed according to law, and establishing the character of the petitioner according to his claim.

[S 524(3) subs by s 4 of Act 14 of 1993.]

(4) The petitioner shall tender with the petition proof of payment of charges to cover the cost of publication of the notice under section 529.

[S 524(4) subs by s 4 of Act 11 of 2010.]

(5) ...

[S 524(5) rep by s 2(2) of Act 38 of 1998.]

525. Duty to report where person dies leaving property exceeding five hundred thousand rupees in value.

When any person shall die in Sri Lanka without leaving a Will it shall be the duty of the widow, widower, or next of kin of such person, if such person shall have left property in Sri Lanka amounting to or exceeding in value four million rupees within one month of the date of his death to report such death to the District Court of the district in which he shall have so died, and at the same time to make oath or affirmation or produce an affidavit verifying the time and place of such death, and stating if such is the fact, that the intestate has left property within the jurisdiction of that or any other, and in that event what Court, and the nature and value of such property.

[S 525 subs by s 4 of Act 14 of 1993; am by s 5 of Act 11 of 2010.]

526. Who may apply for letters of administration.

When any person shall die without leaving a Will or where the Will cannot be found, and such person shall have left property in Sri Lanka—

(a) any person interested in having the estate of the deceased administered may apply for the grant to himself of letters of administration; or

(b) any heir of the deceased may apply for the issue of certificates of heirship to each of the heirs entitled to succeed to the estate of the deceased.

Such application shall be made in accordance with section 528 to the District Court of the district within which the applicant resides, or within which the deceased resided at the time of his death, or within which any land belonging to the deceased's estate is situate.

[S 526 subs by s 4 of Act 14 of 1993.]

527. Administration compulsory where estate is over five hundred thousand rupees in value.

In case no person shall apply for the grant of letters of administration or for the issue of certificates of heirship, as the case may be, and it appears to the Court necessary or convenient to appoint some person to administer the estate or any part thereof, it shall be lawful for the Court in its discretion, and in every such case where the estate amounts to, or exceeds in value, four million rupees, the Court shall in accordance with the procedure set out in this Chapter appoint some person, whether he would under ordinary circumstances be entitled to take out administration or otherwise, to administer the estate, and the provisions of sections 518 to 521, both inclusive, shall apply, so far as the same can be made applicable, to any such appointment.

[S 527 subs by s 4 of Act 14 of 1993; am by s 6 of Act 11 of 2010.]

528. Mode of application for letters of administration or certificates of heirship.

(1) Every application to the District Court for grant of letters of administration or for the issue of certificates of heirship shall be made within three months from the date of death, and shall be made by way of petition and affidavit, and such petition shall set out in numbered paragraphs—

- (a) the fact of the absence of the Will;
- (b) the death of the deceased;
- (c) the heirs of the deceased to the best of the petitioner's knowledge;
- (d) the details and the situation of the deceased's property;
- (e) the particulars of the liabilities of the estate;
- (f) the particulars of the creditors of the estate;
- (g) the character in which the petitioner claims and the facts which justify his doing so;
- (h) the share of the estate which each heir is entitled to receive, if agreed to by the heirs.

[S 528(1) subs by s 4 of Act 14 of 1993.]

(2) The application shall be supported by sufficient evidence to afford *prima facie* proof of the material averments in the petition, and shall name the next of kin of the deceased as respondents. If the petitioner has no reason to suppose that his application will be opposed by any person, he shall file with his petition an affidavit to that effect.

[S 528(2) subs by s 4 of Act 14 of 1993.]

(3) The petitioner shall tender with the petition—

- (a) proof of payment of charges to cover the cost of publication of the notice under section 529;
- (b) the consent in writing of such respondents as consent to his application.
- (c) notices on the respondents who have not consented to the application, requiring them to file objections if any, to the application on or before the date specified in the notice under section 529.

Such notice shall be sent by the probate officer by registered post.

[S 528(3) subs by s 4 of Act 14 of 1993; (c) ins by s 7 of Act 11 of 2010.]

529. Publication of notice relating to application under section 524 or 528.

(1) Every application to a District Court under section 524 or 528 shall be received by the Probate Officer of the District Court, and shall be registered in a separate register to be maintained for that purpose by the Probate Officer who shall thereafter cause the required publications to be made in terms of subsection (2).

(2) The Probate Officer of a District Court shall, on any day of the week commencing on the third Sunday of every month cause a notice in form No. 84 in the First Schedule to be published in a prescribed local newspaper in Sinhala, Tamil and English, relating to—

(i) every application under section 524 or 528 received by that District Court in the preceding one month; and

(ii) every application under section 524 or 528 received by that District Court and incorporated for the first time in the notice published in respect of such District Court in the previous month,

so however that the information in respect of every application under section 524 or 528 received by every District Court is published on two separate occasions in two consecutive months.

[S 529(2) am by s 8(1) of Act 11 of 2010.]

(3) The notice published under subsection (2), shall call upon persons having objections to the making of an order declaring any Will proved, or the grant of probate or of letters of administration with or without the Will annexed, or the issue of certificates of heirship to any person specified in the application made under section 524 or 528, to submit their written objections, if any, supported by affidavit, before such date as is specified in the notice, being a date not earlier than sixty days and not later than sixty-seven days from the date of the first publication referred to in subsection (2).

[S 529(3) am by s 8(2) of Act 11 of 2010.]

(4) Copies of such objections if any, shall be forwarded by the person making the same to the person making the application under section 524 or 528, as the case may be, and shall also be served on the other parties named in such objections.

[S 529 subs by s 4 of Act 14 of 1993.]

530. Appointment of guardian or manager.

If any of the heirs, legatees or beneficiaries of the deceased is a minor without a natural guardian, or person of unsound mind, without a guardian, steps shall be taken for the appointment of a guardian or manager, upon the making of an application to the District Judge, which application shall be heard in Chambers.

[S 530 subs by s 4 of Act 14 of 1993; am by s 9 of Act 11 of 2010.]

531. Order on application made under section 524 or 528.

(1) If no objections are received in relation to any application received under section 524 or 528 in response to a notice published under section 529, on or before the date specified in such notice in respect of such application, the Court shall—

(a) in the case of an application under section 524, if the Court is satisfied that the evidence adduced is sufficient to afford *prima facie* proof as to the due making of the Will and the character of the petitioner, it shall make order declaring the Will to be proved and if the applicant claims—

(i) as the executor or one of the executors of the Will and asks that probate thereof be granted to him the order shall declare that he is executor, and shall direct the grant of probate to him accordingly, subject to the conditions hereinafter prescribed; or

(ii) in any other character than that of executor, and asks that the administration of the deceased's property be granted to him, then the order shall include a grant to the applicant of a power to administer the deceased's property according to the Will with a copy of the Will annexed; or

(b) in the case of an application under section 528—

- (i) make order for the grant of letters of administration to the petitioner subject to the conditions hereinafter prescribed; or
- (ii) make order for the issue of a certificate of heirship in form No. 87A in the First Schedule, to each of the heirs mentioned in the application, stating also the share of the estate which each heir is entitled to receive, if agreed to by the heirs;

(c) in the case of an application under section 528 for the issue of certificates of heirship, make order for the grant of letters of administration, instead, to some person entitled to take out administration, subject to the conditions hereafter prescribed, if in the opinion of Court it is necessary to appoint some person to administer the estate.

(2) The certificates of heirship issued under subsection (1)(b)(ii) above shall be sufficient proof of the true heirs of the deceased referred to therein, and may be produced for the purpose of claiming any share in respect of any right, title or interest, accruing upon intestacy.

(3) For the purpose of making an order under subsection (1), the Probate Officer shall submit all papers, relevant to the application in question, to the District Judge in Chambers on the day following the date specified in the notice published under section 529, in respect of such application and the Court shall forthwith make an appropriate order.

[S 531 subs by s 4 of Act 14 of 1993.]

532. Procedure where there are objections to applications under section 524 or 528.

(1) If any objections are received in relation to any application under section 524 or 528 in response to a notice published under section 529, on or before the date specified in such notice in respect of such application, the Court shall proceed to hear, try and determine such application in accordance with the procedure herein provided and may for such purpose name a day for final hearing and disposal of such application and may in addition, make such order as it may consider necessary under section 541 hereof.

(2) For the purpose of making an order under subsection (1), the Probate Officer shall submit all papers, relevant to the application in question, to the District Judge in Chambers on the day following the date specified in the notice published under section 529.

[S 532 subs by s 4 of Act 14 of 1993.]

532A. Effect of acting in pursuance of a certificate of heirship.

Where upon the production of a certificate of heirship issued by a District Court, under section 531(1)(b)(ii), any money, movable property or certificate is handed over or transferred in pursuance of such certificate, by any bank or institution to any heir entitled to the same, such handing over or transfer shall be deemed to be in discharge of an obligation to the deceased in respect of whose estate the certificate of heirship is so issued.

[S 532A ins by s 4 of Act 14 of 1993.]

533. At final hearing Court to frame issues.

If on the day appointed for final hearing, or on the day to which it may have been duly adjourned the respondent or any person upon whom the order *nisi* has been directed to be served, or any person then appearing to be interested in the administration of the deceased's property, satisfies the Court that there are grounds of objection to the application, such as ought to be tried on *viva voce* evidence, then the Court shall frame the issues which appear to arise between the parties, and shall direct them to be tried on a day to be then appointed for the purpose under section 386.

[S 533 subs by s 4 of Act 14 of 1993.]

534. Orders that may be made on final hearing.

(1) If at the final hearing, or on the determination of the issues thus, framed it shall appear to the Court—

- (a) that the *prima facie* proof of the material averments in the application have not been rebutted, the Court shall forthwith make order for the grant of probate or letters of administration with the Will annexed or grant of administration only subject to the conditions hereinafter prescribed, or for the issue of certificates of heirship, as the case may be; or
- (b) that the *prima facie* proof of the material averments in the petition have been rebutted then the Court shall dismiss the petition, and in the event of any person who has filed objections having at such hearing, or trial of issues, established his right to have probate or administration of the deceased's estate granted to him instead of to the petitioner, then the Court shall further make an order to that effect in his favour subject to the conditions hereinafter prescribed; or
- (c) that any person listed in the petition as an heir is not in fact an heir, or that any other person not listed in the petition as an heir has established his right to be recognised as an heir, then the Court shall make an order accordingly; or
- (d) that, in the case of an application for the issue of certificates of heirship to the heirs of any deceased, that letters of administration ought to be granted instead, for the administration of the estate of such deceased, then the Court shall make order for the grant of administration in accordance with the provisions of this Chapter, subject to the conditions hereinafter prescribed.

(2) The dismissal of any petition shall not be a bar to a renewal of the application by the petitioner as long as grant either of probate of the deceased's Will or of administration of his property, shall not have been made, either on the occasion of this application or subsequently thereto, to some person other than the petitioner.

[S 534 subs by s 4 of Act 14 of 1993.]

535. Procedure where corporation is appointed administrator or executor.

(1) Where a corporation is appointed executor under a Will either alone or jointly with another person, the Court may grant probate to such corporation either solely or jointly with such other person as the case may require, and the corporation may act as executor accordingly.

(2) Letters of administration may be granted to any corporation either solely or jointly with another person and the corporation may act as administrator accordingly.

(3) Any officer, authorised for the purpose by such corporation, may swear affidavits, take the oath of office, give security, and do any other act or thing, which the Court may require on behalf of the corporation and the acts of such officer shall be binding on the corporation.

[S 535 subs by s 4 of Act 14 of 1993.]

536. Who may file caveat.

At any time after the notice published under section 529 and before the final hearing of the petition, it shall be competent to any person interested in the Will or in the deceased person's property or estate, though not a person specified in the petition, to intervene, by filing in the same Court a caveat as set out in form No. 93 in the First Schedule against the allowing of the petitioner's claim or a notice of opposition thereto, and the Court may permit such person to file objections, if any, and may adjourn the final hearing of the petition.

[S 536 subs by s 4 of Act 14 of 1993.]

537. Power to recall, revoke or cancel probate administration or certificate of heirship.

In any case where a certificate of heirship has issued, or probate of a deceased person's Will or administration of a deceased person's property has been granted it shall be competent to the District Court to cancel the said certificate, or recall the said probate or grant of administration, and to revoke the grant thereof, upon being satisfied that the certificate should not have been issued or that the Will ought not to have been held proved, or that the grant of probate or of administration ought not to have been made; and it shall also be competent to the District Court to recall the probate or grant of administration, at any time upon being satisfied that events have occurred which render the administration here under impracticable or useless.

[S 537 subs by s 4 of Act 14 of 1993.]

538. Transitional for recall.

All applications for the cancellation, recall or revocation of certificates of heirship, probate or grant of administration shall be made by petition, in pursuance of the rules of summary procedure, and no such application shall be entertained unless the petitioner shows in his petition that he has such an interest in the estate of the deceased person as entitles him in the opinion of the Court to make such application.

[S 538 subs by s 4 of Act 14 of 1993.]

539. Inventory and valuation.

(1) In every case where an order has been made, by a District Court declaring any person entitled to have probate of a deceased person's Will or administration of a deceased person's property granted to him it shall be the duty of the said person, executor or administrator, in whose favour such order is made, to take within fifteen days of the making of such order, the oath of an executor or administrator as set out in form No. 92 in the First Schedule, and thereafter to file in Court within a period of one month from the date of taking of the oath, an inventory of the deceased person's property and effects, with a valuation of the same as set out in form No. 92 in the First Schedule and the Court shall forthwith grant probate or letters of administration, as the case may be.

(2) Upon the making of an order under section 531(1)(b)(ii) declaring any person entitled to have issued to him a certificate of heirship, the Court shall forthwith issue such certificate to such person.

[S 539 subs by s 4 of Act 14 of 1993.]

540. Limited probate or administration.

It is competent to the District Court to make a grant of probate or a grant of administration, limited, either in respect to its duration, or in respect to the property to be administered thereunder, or to the power of dealing with that property which is conveyed by the grant, in the following cases—

- (a) When the original Will of the deceased person has been lost since the testator's death, but a copy has been preserved, probate of that copy may be granted, limited until the original be brought into Court.
- (b) In the like event, and with the like limitation, if no copy has been preserved, probate of a draft Will may be granted, or if in addition no draft is available, then probate of the contents or of the substance and effect of the Will so far as they can be established by evidence, may be granted.
- (c) When the original Will is in the hands of some person residing out of Sri Lanka, who cannot be compelled to give it up to the executor, and if the executor produces a copy, then probate of that copy may be granted, limited until the original be brought into Court, if, however, the Will has been duly proved out of Sri Lanka, probate may be granted, to the executor on a proper exemplification of the foreign probate without any limitation in the grant.
- (d) If the sole executor of a Will does, or if there are more executors than one and all the executors reside, out of Sri Lanka, or such of the executors as reside in Sri Lanka decline to act, then the Court may grant administration, with copy of the Will annexed to any person within Sri Lanka, as

Attorney of the executor or of the executors, who shall be appointed for that purpose by power of Attorney, the grant so made being limited for the use and benefit of the principal until the executor or one of the executors comes in and obtains probate for himself. If the document admitted to proof in this case be a copy of, or substitute for the original on account of the original itself not being forthcoming by reason of one of the just-mentioned causes, the grant shall further be limited until the original is brought into Court:

Provided also, that if the person applying for the grant is not the Attorney of all the executors, where there are more than one, the grant of administration shall not be made to him until the remaining executors have declined to act.

- (e) In the case of a Will and there being no executor within Sri Lanka willing to act, grant of administration with copy of the Will annexed may be made to the Attorney of an absent residuary legatee, or heir limited until the principal shall come in and obtain administration for himself; or in the like case, the grant may be made to the guardian of a minor residuary legatee, within Sri Lanka, limited during the minority, or to the manager of the estate of a residuary legatee who is of unsound mind, within Sri Lanka, limited during the unsoundness of mind.
- (f) In the case of intestacy, grant of administration of the deceased person's property may be made, limited in like manner to the guardian of a minor heir or to the manager of the estate of an heir who is of unsound mind.
- (g) The Court may grant probate or administration limited to any particular property or for any particular purpose, in any case where it considers that a larger grant is unnecessary.

In all the foregoing cases, the material and relevant facts necessary to justify the Court in making the limited grant must be set out in the petition of application, and must be established by *prima facie* evidence before the order is made.

[S 540 subs by s 4 of Act 14 of 1993.]

541. Administration pendente lite.

(1) Where any legal proceeding touching the validity of the Will of a deceased person or for obtaining, recalling or revoking grant of probate or letters of administration or for obtaining certificate of heirship is pending, the Court may, either on the ground of undue delay or for any sufficient cause—

- (i) grant letters of administration to the estate of the deceased, to an administrator limited for the duration of such proceeding, such administrator shall be subject to the immediate control of the Court and act under its direction and shall not have the right of distributing the estate; or
- (ii) if it become necessary to sell any property of the estate of a deceased person prior to the grant of probate or letters of administration the Court may grant letters, limited for the purpose of selling such property in which event the property shall then be specified in the grant and such grant shall expressly state that the letters are issued subject to the following conditions—
 - (a) that the sale shall be if by private treaty, at the price fixed by Court or if by public auction either at an upset price or otherwise;
 - (b) that the net proceeds of the sale shall be deposited in Court within such time as the Court may prescribe;
 - (c) that the administrator to whom the letters are issued is not empowered to execute any deed of conveyance of immovable property, prior to the confirmation of sale by the Court; and
 - (d) any other stipulation the Court may in the circumstances deem fit to impose.

[S 541(1) subs by s 4 of Act 14 of 1993.]

(2) Before making an order for grant of letters under this section, the heirs of the deceased or other persons who have objected to the application shall be given notice of the application and they or any other person interested in the estate shall be heard in opposition unless they or any of them shall have signified their assent to such sale.

[S 541(2) subs by s 4 of Act 14 of 1993; am by s 10 of Act 11 of 2010.]

542. Power of administration when not limited.

If no limitation is expressed in the order making the grant, then the power of administration, which is authenticated by the grant of probate, or is conveyed by the grant of letters of administration, extends to every portion of the deceased person's property, movable and immovable, within Sri Lanka, other than such property as is deemed under section 554A not to be the property of the deceased, or so much thereof as is not administered, and endures for the life of the executor or administrator or until the whole of the said property is administered, accordingly as the death of the executor or administrator, or the completion of the administration, first occurs.

[S 542 subs by s 4 of Act 14 of 1993.]

543. Issue of letters ad colligenda.

If any person shall die leaving property in Sri Lanka, the Judge of the Court of any district in which such property shall be situate shall, on the facts being verified to his satisfaction and it being made to appear that there is not some next of kin or other person in Sri Lanka, entitled to administration of the estate of the person so dying, issue letters *ad colligenda* in the Form No. 91 in the First Schedule to one or more responsible persons to take charge of such property until the same shall be claimed by some executor or administrator lawfully entitled to administer the same, or by any heir to whom a certificate of heirship shall have been issued.

[S 543 subs by s 4 of Act 14 of 1993.]

544. Nomination.

(1) Any person over sixteen years of age who has—

(a) moneys in any account, other than a current account, in any licensed Commercial Bank or licensed Specialised Bank, within the meaning of the Banking Act, No. 30 of 1988;

[S 544(1)(a) subs by s 2(1) of Act 34 of 2000.]

(b) any share in a company registered in terms of the Companies Act, No. 17 of 1982 or established under any written law for the time being in force; or

[S 544(1)(b) subs by s 3(1) of Act 20 of 2002.]

(c) any life insurance policy issued by the Insurance Corporation of Sri Lanka, established by the Insurance Corporation Act, No. 2 of 1961, or by any corporation incorporated under the Insurance, (Special Provisions) Act, No. 22 of 1979, or by any company registered under the Control of Insurance Act, No. 25 of 1962, as being authorised to transact insurance business;

(d) any money in deposit in any finance company registered under the Finance Companies Act, No. 78 of 1988;

(e) any other movable property in any vault, in any licensed Commercial Bank or licensed Specialised Bank, within the meaning of the Banking Act, No. 30 of 1988;

[S 544(1)(e) subs by s 2(2) of Act 34 of 2000; am by s 2(1) of Act 4 of 2005.]

(f) any instrument relating to any monetary interest (other than a bearer instrument or a negotiable instrument) issued by a company or other body of persons established in terms of any law for the time being in force.

[S 544(1)(f) ins by s 2(2) of Act 4 of 2005.]

may nominate a person (hereinafter referred to as the “nominee”), to whom, such moneys share or other movable property lying to the credit of, or in the name of, such first-mentioned person, (hereinafter referred to as “nominator”) or moneys payable under such insurance policy, shall be paid or transferred upon his death.

For the purposes of this section “share” shall have the same meaning as in the Companies Act, No. 17 of 1982.

[Para ins by s 3(2) of Act 20 of 2002.]

For the purposes of paragraph (f) of this subsection—

“instrument” means a legally enforceable agreement expressing a contractual right to the payment of money; and

“bearer instrument” means a negotiable instrument transferable from one person to another, upon certain conditions being met.

[Para ins by s 2(3) of Act 4 of 2005.]

(2) A nomination made under subsection (1) shall have effect upon the death of the nominator notwithstanding anything in his last Will to the contrary.

(3) Any nomination made under subsection (1) shall be deemed to be revoked by the death of the nominee in the lifetime of the nominator or by written notice of revocation signed by the nominator in the presence of a witness (who shall attest the signature of the nominator) or by any subsequent nomination made by the nominator.

(4) No money, certificates or other movable property shall be handed by the Bank or institution, as the case may be, to any nominee unless the nominee satisfies the Bank or institution as to his true identity.

(5) The handing over, or transferring of, any money, share certificate or deposit certificate or other movable property to any nominee of a nominator who has died, shall be a complete discharge of the obligations of the Bank or institution, in respect of the money, or other movable property, lying to the credit of, or in the name of, such nominator, or under such insurance policy.

[S 544 subs by s 4 of Act 14 of 1993.]

545. No transfer to be effected in certain cases.

No person shall effect any transfer of any property movable or immovable, in Sri Lanka, belonging to or included in, the estate or effects of any person dying testate or intestate in or out of Sri Lanka within five years prior to the effecting of the transfer, unless grant of probate has been issued in the case of a person dying testate, or letters of administration or certificates of heirship have been issued in the case of a person dying intestate and leaving an estate amounting to, or exceeding four million rupees in value.

[S 545 subs by s 11 of Act 11 of 2010.]

546. Probate when executor is appointed for a limited period.

When a person is appointed executor of a Will for a particular purpose only of the Will and not executor of the Will generally, probate will be granted to him limited for that purpose only.

[S 546 subs by s 4 of Act 14 of 1993.]

547. Fresh grant, when allowed.

When a sole executor or a sole surviving executor to whom probate has been granted, or a sole administrator or a sole surviving administrator to whom a grant of administration has been made, dies leaving a part of the deceased’s property un-administered, then a fresh grant of administration may be made in respect of the property left un-administered according to the rules hereinbefore prescribed for a first grant.

[S 547 subs by s 4 of Act 14 of 1993.]

548. Rectification of errors.

Errors in names and descriptions, or in setting forth the time and place of the deceased's death or the purpose in a limited grant, may be rectified by the Court, and probate, letters of administration or certificates of heirship so granted or issued may be altered and amended accordingly.

[S 548 subs by s 4 of Act 14 of 1993.]

549. Compensation of executors and administrators.

Compensation shall be allowed to executors and administrators by way of commission as well on property not sold but retained by the heirs, as on property sold by such executors and administrators, at such rate not exceeding three *per centum*, and on cash found in the estate and on property specially bequeathed, at such rate not exceeding one and a half *per centum*, as the Court shall, after taking into consideration the circumstances of each particular case with reference to the trouble incurred by such executors or administrators, determine. In no case, shall a larger sum than five thousand rupees be allowed to any executor or administrator as such compensation, unless it shall be made apparent to the Court that such unusual trouble has fallen upon him as to entitle him, in the opinion of the Court, to receive further remuneration.

[S 549 subs by s 4 of Act 14 of 1993.]

550. Compensation of several executors.

Each executor or administrator shall be entitled to the full compensation allowed by law to a sole executor or administrator, unless there are more than three, in which case the compensation to which three would be entitled shall be apportioned among them all according to the services rendered by them respectively, and a like apportionment shall be made in all cases where there shall be more than one executor or administrator. But where the Will provides a specific compensation for an executor or administrator, he shall not be entitled to any allowance other than that so provided, unless he files in Court a written renunciation of the specific compensation.

[S 550 subs by s 4 of Act 14 of 1993.]

551. Filing of accounts.

Every executor and administrator shall file in the District Court, on or before the expiration of twelve months from the date upon which probate or grant of administration issued to him, or within such further time as the Court may allow, a true and final account of his executorship or administration, as the case may be, verified on oath or affirmation, with all receipts and vouchers attached, and may at the same time pay into Court any money which may have come to his hands in the course of his administration to which any minor or minors may be entitled:

Provided that where the parties consent, the filing of such account and payment shall be dispensed with on payment of the stamp duty that would have been otherwise payable on the filing of such account, and the proceedings shall then be closed.

[S 551 subs by s 4 of Act 14 of 1993.]

552. Executor or administrator failing to administer within one year liable for interest.

If any executor or administrator shall fail to pay over to the creditors, heirs, legatees, or other persons the sums of money to which they are respectively entitled within one year after probate or administration is granted, such executor or administrator shall be liable to pay interest out of his own funds for all sums which he shall retain in his own hands after that period, unless he can show good and sufficient cause for such detention.

[S 552 subs by s 4 of Act 14 of 1993.]

553. Offences.

(1) Any person who willfully conceals the existence of a Will or knowingly fails to comply with the provisions of section 516 shall be guilty of an offence and shall be liable to a fine equivalent to the value of the estate dealt with in the Will.

(2) Any person who willfully—

(a) fails to disclose the existence of any heirs of the deceased; or

(b) makes a false statement regarding any heir of the deceased; or

(c) makes a false statement regarding the property, the creditors or debtors of the deceased; or

(d) makes any other false statement relating to any matter which is required to be set out,

in any application made under section 524 or 528, shall be guilty of an offence and be liable to a fine equivalent to the value of the share or shares devolving on the heir or heirs who have not been disclosed or the value of the property with regard to which the false statement has been made, as the case may be.

[S 553 subs by s 4 of Act 14 of 1993.]

554. Transitional provisions.

(1) Where a person has died without leaving a Will in Sri Lanka prior to the date on which this Chapter comes into operation, and testamentary proceedings have not commenced in respect of the estate of such person, the provisions of this Chapter shall apply to the administration of such estate.

(2) Where an application has been made to any District Court prior to the date on which this Chapter comes into operation, for the issue of probate of a Will or the grant of letters of administration in respect of an estate the value of which is over rupees four million, and an order *nisi* has not been made, such application shall be deemed to be an application made under section 524 or 528, as the case may be, and shall be heard and disposed of in accordance with the provisions of this Chapter.

[S 554(2) am by s 12 of Act 11 of 2010.]

(3) Where an application has been made to any District Court prior to the date on which this Chapter comes into operation, for the grant of letters of administration, in respect of an estate the value of which is less than rupees four million, and an order *nisi* has not been made, such application shall be terminated on coming into operation of this Chapter:

[S 554(3) am by s 12 of Act 11 of 2010.]

Provided however, if it appears to Court that it is necessary or convenient to grant letters of administration or certificates of heirship, as the case may be, to any person interested in having the estate of such deceased person administered, or where any heir of such deceased person is interested in obtaining certificates of heirship in respect of such estate, the Court may in its discretion, permit the continuation of such action.

[S 554 subs by s 4 of Act 14 of 1993.]

554A. Interpretation.

(1) In this Chapter, “Probate Officer” means the Registrar of the District Court and includes any other officer generally or specially authorised by the Court to exercise the powers and perform the duties of a Probate Officer, in testamentary proceedings.

(2) For the purpose of proceedings under this Chapter “estate” and “property” of any deceased person shall be deemed not to include—

(a) any money or other movable property lying in any Bank to the credit of such deceased at the time of his death;

(b) the moneys represented by any share certificates and deposit certificates issued by any institution and remaining in the name of such deceased at the time of his death;

if he had made a nomination in respect thereof under subsection (1) of section 544; and
(c) the moneys payable under a contract of insurance entered into by the deceased and subsisting on the date of his death whether any nomination in respect thereof had been made under subsection (1) of section 544, or not.

[S 554A ins by s 86 of Law 20 of 1977;
subs by s 4 of Act 14 of 1993.]

554B. ...

[S 554B ins by s 86 of Law 20 of 1977;
rep by s 4 of Act 14 of 1993.]

554C. ...

[S 554C ins by s 86 of Law 20 of 1977;
rep by s 4 of Act 14 of 1993.]

554D. ...

[S 554D ins by s 86 of Law 20 of 1977;
rep by s 4 of Act 14 of 1993.]

554E. ...

[S 554E ins by s 86 of Law 20 of 1977;
rep by s 4 of Act 14 of 1993.]

CHAPTER XXXVIII

INSOLVENT TESTAMENTARY ESTATES

[Chapter XXXVIII ins by s 87 of Law 20 of 1977.]

554F. When the estate of a deceased person is deemed to be insolvent.

The estate of a deceased person shall be deemed to be insolvent—

- (i) If upon the basis of a valuation of his assets and liabilities as at the date of his death or at any time subsequent thereto, it appears that the assets are or will be insufficient to pay in full the funeral, testamentary and administration expenses relating to the estate, and the claims of creditors; or
- (ii) if owing to execution proceedings being taken against the deceased or his estate or the difficulty of realising any of the assets of the estate, or because of disputed claims, or for any other sufficient reason, the estate should be administered as an insolvent estate for the benefit of all parties interested in the estate.

554G. Where estate insolvent, applicant for probate to take steps to have it so declared.

(1) Where an estate is deemed to be insolvent at the date an application for probate or letters of administration is made, the petitioner shall, in addition to the other averments required to be stated in the petition for probate or letters, set out the material facts upon which adjudication that the estate should be deemed to be insolvent is claimed, and shall contain detailed lists showing—

- (a) the names of all persons who to the best of the petitioner's knowledge and belief have claims against the estate;
- (b) the last known place of abode or business of such persons;
- (c) the sums claimed by each of such persons and whether or not the sums claimed are liquidated or unliquidated amounts; and
- (d) whether or not the sums claimed or any parts thereof are admitted by the petitioner.

(2) In the petition so filed, the persons who are required to be named as respondents to the application for probate or letters, shall be made respondents.

554H. Where estate insolvent, executor or administrator to take steps to have it so declared.

(1) Where after grant of probate or letters an estate is deemed to be insolvent, the executor or administrator shall file a petition by way of summary procedure for an adjudication that the estate shall be deemed to be insolvent, and such petition shall set out the material facts and the lists as are required to be filed under the last preceding section.

(2) In such petition all persons named in the original petition for grant of probate or letters shall be made respondents.

554J. Creditor may also apply for adjudication of estate as insolvent.

(1) It shall be competent for a creditor, heir, beneficiary, or other person interested in the estate, similarly to make application for adjudication that the estate should be deemed to be insolvent, and the provisions of section 554G shall, *mutatis mutandis*, apply to such application.

(2) The applicant for probate or letters or the executor or administrator of the estate, shall in addition be made respondent to such application.

554K. Order nisi declaring estate insolvent.

Upon the Court being satisfied that the facts stated in the petition are *prima facie* established, it shall enter a testamentary insolvency order *nisi* declaring the estate to be insolvent in the Form No. 93A in the First Schedule.

554L. When order nisi to be served.

A copy of the testamentary insolvency order *nisi* shall be served on each the respondents named therein and notice of such order *nisi* in the form No. 93B in the First Schedule shall be advertised at the expense of the petitioner not later than one month prior to the date fixed in such order *nisi* for the determination of the matters contained therein in accordance with the provisions of section 532.

554M. Person interested may intervene.

Any person interested in the estate shall be entitled to appear on the day fixed therein and may show cause or support the application, and the Court may after due inquiry in accordance with the provisions of Chapter XXIV, either dismiss the petition or make the testamentary insolvency order *nisi* absolute.

554N. Order absolute to be advertised.

The testamentary insolvency order absolute shall be in the form No. 93C in the First Schedule, and shall be advertised in the same manner as the order *nisi* and in such other manner if any, as the Court shall consider necessary in the circumstances of the case.

554P. Actions and execution proceedings to be stayed after such order nisi.

As from the date on which the testamentary insolvency order *nisi* declaring the estate insolvent is made, all actions in respect of admitted claims and all execution proceedings against the estate of the deceased shall be stayed, subject however, to the right of any secured creditor who has taken out execution proceedings, to proceed to realise his security upon such conditions as the Court, having regard to the provisions of the Insolvency Ordinance, shall order.

554Q. When Court may appoint fit person to administer estate.

Where the executor named in the Will or the widow or widower is unwilling to proceed with the due administration of an insolvent estate, or where the executor or administrator to whom probate or letters have been issued fails to administer the estate with reasonable dispatch, the Court may, having regard to the proper conservation of the estate and the interest of all parties before it, appoint any fit person to administer the estate.

554R. How insolvent estate to be distributed.

Where a testamentary insolvency order shall have been made, the estate shall be distributed in accordance with the following provisions—

- (a) the funeral, testamentary and administration expenses shall first be paid out of the assets available;
- (b) subject as aforesaid the provisions for the time being in force under the law of insolvency with respect to the estate of a person adjudged insolvent shall apply and be observed in regard to the respective rights of secured and unsecured creditors as to the debts and liabilities provable, the valuation of annuities and future and contingent liabilities, and the priorities of debts and liabilities.

554S. Powers and obligations of executors and administrators.

An executor or administrator of an insolvent estate shall have the same powers and be subject to the same obligations as the assignee of an insolvent appointed under the Insolvency Ordinance.

554T. Administration of estates not to be saved due to appeal.

An appeal from a testamentary insolvency order *nisi* or absolute declaring an estate insolvent shall not have the effect of staying the further proceedings in administration, unless the Court of Appeal shall make order to the contrary.

CHAPTER XXXVIII B

FOREIGN PROBATES

[Chapter XXXVIII B ins by s 87 of Law 20 of 1977.]

554U. Sealing of foreign probates or letters of administration.

Where a Court of Probate or other authority in a foreign country has either before or after the 15th day of December, 1977, granted probate or letters of administration in respect of the estate of a deceased person, probate or letters so granted may, on being produced to, and a copy thereof deposited with, a competent Court, be sealed with the seal of that Court and thereupon shall be of like force and effect and have the same operation in Sri Lanka as if granted by that Court.

554V. Conditions to be fulfilled before sealing.

The Court shall, before sealing the probate or letters of administration under this Chapter, be satisfied—

- (a) that the testamentary duty has been paid or secured in respect of so much, if any, of the estate is liable to testamentary duty in Sri Lanka; and
- (b) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in Sri Lanka to which the letters of administration relate; and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.

554W. Security for payment of debts.

The Court may also if it thinks fit on the application of any creditor require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Sri Lanka.

554X. Duplicate or copy of probate or letters of administration.

A duplicate of any probate or letters of administration sealed with the seal of the Court granting the same, or a copy thereof certified as correct by or under the authority of such Court shall have the same effect as the original.

554Y. Liabilities of executors and administrators.

The sealing of probate or letters of administration under this Chapter shall not affect the liability of an executor or administrator—

(a) to file within the time appointed by Court an inventory of the deceased person's property and effects situated in Sri Lanka with valuation of same as required by section 539;

[S 554Y(a) am by s 5(1) of Act 14 of 1993.]

(b) to file, on or before the expiration of twelve months from the date of such sealing, a true and final account, as regards the deceased's property and effects situated in Sri Lanka, of his executorship or his administration, as the case may be, verified on oath or affirmation, with all receipts or vouchers attached as required by section 551; and

[S 554Y(b) am by s 5(2) of Act 14 of 1993.]

(c) to be compelled to make a judicial settlement of his account as executor or administrator, with respect to the deceased's property situated in Sri Lanka, under the provisions of Chapter IV.

554Z. Resealing Court, deemed to be Court issuing probate or letters of administration.

For the purpose of all estates to which this Chapter applies—

(a) all references in this Ordinance to any Court as being the Court from which grant of probate or letters of administration issued shall be construed as references to the Court by which probate or letters of administration have been sealed under this Chapter and all references to the granting of probate or letters of administration or to an order absolute declaring a person entitled to such grant shall be construed as referring to the sealing of probate or letters of administration under this Chapter;

(b) all references in the Stamp Ordinance to the grant of probate or letters of administration shall be deemed to include a reference to the sealing of probate or letters of administration under this Chapter, and all references to probate or letters of administration shall be deemed to include a reference to any probate or letters of administration or to any duplicate or certified copy thereof sealed under this Chapter.

554AA. British Courts Resealing Rules deemed to be in force.

Notwithstanding the repeal of the British Courts Probate (Resealing) Ordinance, the British Courts Resealing Rules, 1939, shall be deemed to be and to continue in force for the purposes of this Chapter as if the said Ordinance had not been repealed, and may be amended, varied, altered or rescinded by rules made under Article 136 of the Constitution.

[S 554AA am by s 40 of Act 79 of 1988.]

554BB. Interpretation.

In this Chapter—

“competent Court” means—

(a) the District Court of Colombo; or

(b) the District Court within the local limits of whose jurisdiction—

(i) the estate or any part of the estate in Sri Lanka of the deceased person is situate; or

(ii) the executor or administrator or the Attorney of the executor or administrator of that part of the estate of the deceased person which is being administered outside Sri Lanka is resident;

“Court of Probate” means any Court or authority by whatever name designated having jurisdiction in matters of probate; and

“probate” and “letters of administration” include any instrument having in any foreign country the same effect which under the law of Sri Lanka is given to probate and letters of administration respectively.

CHAPTER XXXVIIC

GENERAL AND TRANSITIONAL PROVISIONS IN TESTAMENTARY MATTERS

[Chapter XXXVIIC ins by s 87 of Law 20 of 1977.]

554CC. Stamp duty to be first charge on the estate of the deceased.

The provisions of the Stamp Ordinance shall apply to, and in relation to, every application, order or other document in testamentary proceedings and the executor or administrator, as the case may be, shall be personally liable for the payment of such stamp duty. The amount so paid by way of stamp duty shall be recoverable by the executor or administrator as a first charge on the estate of the deceased after the grant of probate or letters of administration.

554DD. Transitional provision.

Where any person has prior to the 15th day of December, 1977, died in Sri Lanka leaving an estate and testamentary proceedings had not been commenced in respect of such estate before the 15th day of December, 1977, such proceedings may be instituted under the provisions of this Ordinance.

CHAPTER XXXIX

ACTIONS RELATING TO PERSONS OF UNSOUND MIND

555. Definition of “person of unsound mind”.

The expression “person of unsound mind” as used in this Ordinance shall, unless the contrary appears from the context, mean every person found by due course of law to be of unsound mind and incapable of managing his affairs.

556. District Court to institute inquiry.

(1) Whenever any person who is possessed of property is alleged to be a person of unsound mind, the District Court within whose jurisdiction such person is residing may, upon such application as is hereinafter mentioned, institute any inquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs.

Application for, how to be made.

(2) Application for such inquiry may be made on petition in the way of summary procedure by any relative of the person alleged to be of unsound mind, or by a Superintendent of Police, or at the instance of the Attorney-General, or if the property of the person alleged to be of unsound mind consists in whole or in part of land, or of any interest in land, by the Government Agent of the district in which it is situate.

[S 556(2) am by s 88 of Law 20 of 1977.]

557. When may petition be dismissed.

When the District Court on such application being made to it is not satisfied by affidavit or other evidence that such inquiry as aforesaid ought to be instituted, it shall dismiss the petition.

558. Procedure on Court being satisfied that inquiry ought to be instituted.

When the District Court on any such application being made to it, is satisfied by affidavit or other sufficient evidence that such inquiry as aforesaid ought to be instituted, it shall pass an order to that effect and then appoint a time and place for holding the inquiry.

559. Proceeding in such case.

As soon as such order shall have been passed, the District Court shall cause a copy of the petition and of the order made thereon to be served upon the person alleged to be of unsound mind. If it shall appear that the person alleged to be of unsound mind is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the petition and order as it shall

think proper. The Court may also direct a copy of such petition and order to be served upon any specified relative of the person alleged to be of unsound mind.

560. Person alleged to be of unsound mind may be required to attend.

The District Court may also at any time before or pending the inquiry, require the person alleged to be of unsound mind to attend at such convenient time and place as it may appoint, for the purpose of being personally examined by the Court or by any person from whom the Court may desire to have a report of, or testimony as to, the mental capacity and condition of such person alleged to be of unsound mind. The Court may likewise make an order authorising any person or persons therein named to have access to the person alleged to be of unsound mind for the purpose of a personal examination.

561. Assessors.

The District Court, if it think fit may appoint two or more persons to act as assessors to the Court in the said inquiry.

562. Issue.

The issue to be tried on such inquiry shall be whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his affairs.

563. Trial of issue to be public.

The trial of this issue shall be effected by *viva voce* examination and cross-examination of witnesses, as nearly as may be as is hereinbefore directed for the trial of the matter of an ordinary civil action; and the inquiry, whether held in Court or in a private house, shall be public.

564. Person of unsound mind to be present.

The person alleged to be of unsound mind shall be present at the inquiry and shall take part as a party defendant therein either by his registered Attorney or counsel or in person, unless his state of health, or his behaviour, is such as to render either his being present or his participating in the proceedings unfitting or unseemly.

Any relative of the person alleged to be of unsound mind may also, if the Court thinks fit, appear and take part in the inquiry on behalf of the person alleged to be of unsound mind,

565. Adjudication on the Issue.

Costs.

Upon the completion of the inquiry, the C568

Court shall adjudicate whether the person alleged to be of unsound mind is or is not of unsound mind and incapable of managing his affairs. And at the same time the Court may make such order as to the payment of the cost of the inquiry by the person upon whose application it was made, or by the person alleged to be of unsound mind, if he be adjudged to be of sound mind, or out of his estate, if he be adjudged of unsound mind and incapable of managing his affairs, or otherwise, as it may think proper.

566. When petition to be dismissed after inquiry.

When a person has been adjudged not to be of unsound mind and not incapable of managing his affairs, the Court shall dismiss the petition.

567. Manager to be appointed.

When a person has been adjudged to be of unsound mind and incapable of managing his affairs, the District Court shall appoint a manager of the estate. Any near relative of the person of unsound mind or any other suitable person may be appointed manager.

568. Guardian of person.

Whenever a manager of the estate of a person of unsound mind is appointed by the District Court, the Court shall appoint a fit person to be guardian of the person of the person of unsound mind. The manager may be appointed guardian:

Provided, always that the heir-at-law of the person of unsound mind shall not in any case be appointed guardian of his person.

569. Allowance to manager or guardian.

If the person appointed to be manager of the estate of a person of unsound mind, or the person appointed to be guardian of the person of, a person of unsound mind, shall be unwilling to discharge the trust gratuitously, the Court may fix such allowance or allowances to be paid out of the estate of the person of unsound mind as, under the circumstances of the case, may be thought suitable.

570. Duties of guardian.

The person appointed to be guardian of the person of a person of unsound mind shall have the care of his person and maintenance. When a distinct guardian is appointed, the manager shall pay to the guardian such allowance as shall be fixed by the Court, either at the time when the guardian is appointed or after wards, on an application made by such guardian by petition in the way of summary procedure, for the maintenance of the person of unsound mind and of his family.

571. Powers of manager, Restrictions on manager's powers.

Every manager of the estate of a person of unsound mind appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a person of unsound mind; and may collect and pay all just claims, debts, and liabilities due to or by the estate of the person of unsound mind. But no such manager shall have power to sell or mortgage the estate or any part thereof, or to grant a lease of any immovable property for any period exceeding five years, without an order of the District Court previously obtained.

572. Inventory Account.

(1) Every person appointed by the District Court to be manager of the estate of a person of unsound mind shall, within a time to be fixed by the Court, deliver in Court an inventory of the immovable property belonging to the person of unsound mind, and of all such movable property, sums of money, goods, and effects as he shall receive on account of the estate, together with a statement of all debts due by or to the same. And every such manager shall furnish to the Court annually, within three months of the close of the year, an account of the property in his charge, exhibiting the sums received and disbursed on account of the estate and the balance remaining in his hands.

(2) If any relative of the person of unsound mind, or the Attorney-General, by petition to the Court, shall impugn the accuracy of the said inventory and statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter and make such order thereon as it shall think proper.

573. Excess over expenditure, to be paid into kachcheri.

All sums received by a manager on account of any estate in excess of what may be required for the current expenses of the person of unsound mind or of the estate shall be paid into the kachcheri on account of the estate, and shall be dealt with thereafter in such manner as is prescribed by law in the case of suitors' deposits.

574. Relative may sue for account.

It shall be lawful for any relative of a person of unsound mind to sue for an account from any manager, appointed under this Ordinance, or from such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

575. Manager or guardian how to be removed.

(1) The District Court, for any sufficient cause, may on the application of the guardian or of a relative of the person of unsound mind, or of the Attorney-General, Superintendent of Police, or (where the property of the person of unsound mind consists in whole or in part of land, or of any interest in land)

of the Government Agent, made by petition in the way of summary procedure, remove any manager appointed by the Court, and may appoint any other fit person in his room, and may compel the person so removed to make over the property in his hands to his successor, and to account to such successor for all moneys received or disbursed by him.

[S 575(1) am by s 89 of Law 20 of 1977.]

(2) The Court may also, for any sufficient cause, in like manner remove any guardian appointed by the Court.

576. Punishment for neglect or refusal to account.

The District Court may on any application made to it by a relative of the person of unsound mind or a public officer under section 575 impose a fine not exceeding five hundred rupees on any manager of the estate of a person of unsound mind who willfully neglects or refuses to deliver his accounts or any property in his hands within the prescribed time or a time fixed by the Court, and may realise such fine by attachment and sale of his property under the rules in force for the execution of decrees of Court, and may also commit him to close custody until he shall deliver such accounts or property.

577. Where not necessary Court need not appoint manager.

If it appears to the District Court, having regard to the situation and condition in life of the person of unsound mind and his family, and the amount and description of his property, to be unnecessary to appoint a manager of the estate as hereinbefore provided, the Court may, instead of appointing such manager, order that the property if money, or, if of any other description the proceeds thereof, when realised in such manner as the Court shall direct, be paid to such persons as the Court may think fit, to be applied for the maintenance of the person of unsound mind and his family.

578. Further inquiry, when person of unsound mind so found alleged to have recovered.

(1) When any person has been adjudged to be of unsound mind and incapable of managing his affairs, if such person or any other person acting on his behalf, or having or claiming any interest in respect of his estate, shall represent by petition to the District Court, or if the Court shall be informed in any other manner, that the unsoundness of mind of such person has ceased, the Court may institute an inquiry for the purpose of ascertaining whether such person is or is not still of unsound mind and incapable of managing his affairs.

(2) The inquiry shall be conducted in the manner provided in section 560 and the four following sections of this Ordinance; and if it be adjudged that such person has ceased to be of unsound mind and incapable of managing his affairs, the Court shall make an order for his estate to be delivered over to him, and such order shall be final.

579. Saving of Mental Diseases Ordinance.

In all cases in which this Chapter is applicable, the procedure herein provided shall be followed, anything in the Mental Diseases Ordinance to the contrary notwithstanding.

582. Appeal to Court of Appeal.

Every order made by a District Court under the provisions of this Chapter shall be subject to an appeal to the Court of Appeal, and such appeal may be prosecuted by, or at the instance of, the person suspected or adjudged to be of unsound mind, or of any relative or friend of his, or of any medical practitioner who shall have certified or testified to his state of mind; and the Court of Appeal shall take cognisance of such appeal, and deal with the same as an appeal from an interlocutory order of the District Court, and make such order thereon as to the said Court shall seem fit. And it shall be the duty of the District Court to conform to and execute such order.

580A. Provisions applicable to mentally deficient persons.

(1) The provisions contained in this Chapter, other than section 555 shall apply in the case of mentally deficient persons.

(2) For the purposes of this section, “mentally deficient persons”, mean persons who are incapable of managing their own affairs by reason of being mentally ill, feeble, infirm or defective, though not adjudicated as persons of unsound mind in accordance with any law for the time being in force.

[S 580A ins by s 14 of Act 53 of 1980.]

581. Proceedings exempt from stamp duty.

No stamp duty shall, attach or be payable for any application, process or other document filed in Court under the provisions of this Chapter.

CHAPTER XL

ACTIONS FOR THE APPOINTMENT OF GUARDIANS

582. Certificate of right to have charge of minor’s property.

Every person who shall claim a right to have charge of property in trust for a minor, under a Will or deed, or by reason of nearness of kin, or otherwise, may apply to the Family Court for a certificate of curatorship; and no person shall be entitled to institute or defend any action connected with the estate of a minor, of which he claims the charge, until he shall have obtained such certificate:

Provided, any Court having jurisdiction may allow any relative of a minor to institute or defend an action on his behalf, although a certificate of curatorship has not been granted to such relative.

[S 582 first proviso subs by s 41 of Act 79 of 1988.]

And provided further that any such person so claiming to have charge of any such property under the provisions of a Will of which probate shall have been duly granted, may institute or defend any such action without having obtained such certificate.

Explanation

A person to whom letters of administration of a deceased person’s estate have been granted under Chapter XXXVIII of this Ordinance does not thereby obtain a right to have charge, within the meaning of this section, of such portion or share of his deceased’s estate, if any there be, as descends to a minor heir.

583. Application for appointment of person to have charge of property or person of minor.

Any relative or friend of a minor, in respect of whose property such certificate has not been granted, may apply by petition in the way of summary procedure to the Family Court, to appoint a fit person to take charge of the property and person or of either property or person of such minor.

584. ...

[S 584 rep by s 42 of Act 79 of 1988.]

585. Charge of property of minor to whom to be granted.

(1) If it shall appear that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a Will or deed, and is willing to undertake the trust, the Court shall grant a certificate of curatorship to such person.

(2) If there is no person so entitled, or if such person is unwilling to undertake the trust and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a certificate to such relative.

Same person may be appointed guardian of person.

(3) The Court may also, if it think fit (unless a guardian has been appointed by the father), appoint such person as aforesaid or such relative, or any other relative or friend of the minor, to be guardian of the person of the minor.

Court may call upon Grama Seva Niladhari to report on qualification.

(4) The Court may call upon any Grama Seva Niladhari for a report on the character and qualification of any relative or friend of the minor who may be desirous or willing to be entrusted with the charge of the property or person of such minor, and who resides in the division.

586. When charge of property may be granted to any fit person.

If no title to a certificate is established to the satisfaction of the Court by a person claiming under a Will or deed, and if there is no near relative willing and to be entrusted with the charge of the property of the minor, and the Court shall think it necessary for the interest of the minor that provision should be made by the Court for the charge of the property and person of such minor, the Court may grant a certificate to any fit person whom the Court may appoint for the purpose.

587. Guardian to have charge of the person and maintenance, to be appointed at the same time.

(1) Whenever the Court shall grant a certificate of curatorship to the estate of a minor who is resident in Sri Lanka to any person under the last section, it shall at the same time appoint a guardian to take charge of the person and maintenance of the minor,

(2) The person to whom a certificate of curatorship has been granted may be appointed guardian, provided he would not be the legal heir of the minor, if the minor then died.

his allowance.

(3) If the person appointed to be guardian be unwilling to discharge the trust gratuitously, the Court may assign him such allowance, to be paid out of the estate of the minor, as under the circumstances of the case it may think suitable. The Court may also fix such allowance as it may think proper for the maintenance and education of the minor; and such allowance and the allowance of the guardian (if any) shall be paid to the guardian by the other person as aforesaid.

(4) In any case in which the Court is satisfied that it will be for the interest of the minor, it may direct the raising of such allowance out of the corpus of the estate, by mortgage or sale or such other mode of realisation as it thinks fit.

588. Costs of inquiries.

(1) In all inquiries held by the Family Court under this Chapter, the Court may make such order as to the payment of costs by the person on whose application the inquiry was made, or out of the estate of the minor, or otherwise, as it may think proper.

Inventory, Accounts.

(2) Every curator other than one deriving title under a Will or deed, to whom a certificate shall have been granted under this Chapter, shall, within a time to be fixed by the Court, file in Court an inventory of the property belonging to the minor, and shall also twice every year, namely, within one month from the first day of January and the first day of July, respectively, in each year, file an account of the property in his charge, exhibiting the amounts received and disbursed on account of the estate and the balance in hand.

589. Impeachment of the inventory and accounts.

Any relative of the minor or the minor himself by a next friend or the Attorney-General may, by petition and by way of summary procedure, impeach and falsify the correctness of the said inventory and periodic accounts, or complain of delay in the filing, of them; and the Court may on any such application make such order as it shall think proper.

590. Any relative of minor may sue curator for accounts.

It shall be lawful for any relative of a minor with the leave of the Court, or the minor himself by a next friend, at any time during the continuance of the minority, to sue for an account from any person to whom a certificate shall have been granted under the provisions of this Ordinance, or from any such person after his removal from office or trust, or from his personal representative in case of his death, in respect of any estate then or formerly under his care or management, or of any sums of money or other property received by him on account of such estate.

591. Recall of the certificates.

The Family Court, for any sufficient cause shown on petition by way of summary procedure preferred by the guardian, or by a relative, or by a next friend of the minor, or by the Attorney-General, may recall any certificate granted under this chapter and may grant a certificate to any other person; and may compel the person whose certificate has been recalled to make over the property in his hands to his successor, and to account to such successor for all moneys received and disbursed by him. The Court may also sufficient cause in like manner remove any guardian appointed by the Court.

592. Resignation and discharge of curator of property, or guardian of person of minor.

(1) The Family Court may permit any person to whom a certificate shall have been granted under this Ordinance, and any guardian appointed by the Court, to resign his trust; and may give him a discharge therefrom on his accounting to his successor, duly appointed, for all moneys received and disbursed by him, and making over the property in his hands.

(2) The application to be discharged from the trust shall be made by petition in the way of summary procedure, in which petition a near relative of the minor or the Attorney-General shall be named a respondent; and it shall be competent to the Court to direct that any other person be made a respondent.

593. Allowance of curator.

Every curator other than one deriving title under a Will or deed, to whom a certificate shall have been granted under this Chapter, if he is not willing to discharge the trust gratuitously, shall be entitled to receive such allowance, to be paid out of the minor's estate, as the Family Court shall by order, made when the curator is appointed or afterwards on an application made by the curator by petition in the way of summary procedure, think fit to direct.

594. Minor's education.

Every guardian appointed by the Family Court under this Chapter, who shall have charge of any minor, shall be bound to provide for his education in a suitable manner. The general superintendence and control of the education of all such minors shall be vested in the Family Court.

CHAPTER XLI

ACTIONS FOR APPOINTMENT AND REMOVAL OF TRUSTEES

595. Trustees.

Applications to the District Court for the exercise of its jurisdiction for the appointment or removal of a trustee, and not asking any further remedy or relief, may be made by petition in the way of the summary procedure hereinbefore prescribed.