

# HIGH COURT OF AUSTRALIA.

## RULES OF COURT.

AS OF WEDNESDAY, THE SEVENTEENTH DAY OF DECEMBER, 1930.

PURSUANT to the *Administration and Probate Ordinance 1929-1930* and to all other powers thereunto enabling, it is ordered that the Rules of Court hereinafter set out shall apply to all matters coming before the High Court in pursuance of the said Ordinance.

ISAAC A. ISAACS, C.J.

G. E. RICH, J.

W. E. STARKE, J.

OWEN DIXON, J.

(L.S.)

SEAFORTH MACKENZIE, Principal Registrar.

### 1. PRELIMINARY.

1. In these Rules, unless the contrary intention appears—

Interpretation.

“the Ordinance” means the *Administration and Probate Ordinance 1929-1930*;

“the Registrar-General” means the Registrar-General of the State of New South Wales;

“the Schedule” means the Schedule to these Rules.

2. Every proceeding in the Court in the jurisdiction conferred on it by the Ordinance shall be entitled “In the High Court of Australia Probate Jurisdiction In the Territory for the Seat of Government”.

### 2. APPLICATION FOR REPRESENTATION.

3.—(1.) Notice of an intended application for representation shall be in accordance with Form 1 or 2 in the Schedule.

Notice of intended application for probate or administration.  
N.S.W. r. 6.

(2.) In application for administration when a reduction of or dispensation with the prescribed bond is asked for, notice shall also be given to creditors to send in their claims, and an affidavit of the publication and result of that notice shall be filed in the Registry.

4. Notice of an intended application to reseal any foreign grant of representation shall be in accordance with Form 3 in the Schedule.

Notice of intended application to reseal foreign grant.

5.—(1.) Unless otherwise provided in the Ordinance or these Rules an application for representation may be made on motion which unless the Court or a Justice otherwise orders may be made *ex parte*.

Ib. r. 6.  
Application to be made on motion.  
Ib. r. 7.

(2.) The application may be made through a solicitor or in person by executors and parties entitled to grants of administration.

6.—(1.) Every application for probate shall be accompanied by affidavits setting forth—

Application for probate.  
Vic. r. 6.

(a) that the applicant, being a person, is of the full age of twenty-one years;

(b) the death of the testator, and whether married or not;

(c) the date of the decease of the testator;

(d) that the testator has left a will, and that the will is unrevoked (if that be the fact);

(e) the date of the will;

(f) that the testator was of the full age of twenty-one years at the date of the execution of the will;

(g) the name of each executor and of each of the subscribing witnesses thereto, and the residence of each at the time the affidavit is sworn (if known);

(h) that the will was duly executed;

(i) an identification or statement of the contents of the will;

(j) a statement of the value of the property in the Territory distinguishing real and personal, and stating shortly of what it consists;

(k) that a search for any other will deposited has been made in the office of the Registrar-General, and in the index, lodged in the office of the Registrar-General, of wills deposited with the Public Trustee and in the office of any officer who may from time to time be authorized by law to register wills in the Territory;

- (l) that notice of intention to make the application has been published as prescribed;
- (m) that no caveat has been lodged up to the morning of the application; and
- (n) that no application for probate or administration in the matter has theretofore been made to or been granted by the Court or the Registrar; or, if any previous application been made, the full particulars thereof.

N.S.W. r. 9 (3). (2.) Subject to Rule 8 of these Rules, the affidavit that the will was duly executed shall be made by one of the subscribing witnesses to the will.

Where testator a marksman.  
Vic. r. 7.

7. Where a will is executed by a testator by his affixing his mark thereto, an affidavit of the due execution thereof and of the cause of it being by mark shall also, if possible, be made by one or more of the subscribing witnesses thereto.

Proof of execution of will or codicil where subscribing witnesses dead &c.  
N.S.W. r. 15.

8. If both subscribing witnesses to a will or codicil are dead, or if from other circumstances, no affidavit can be obtained from either of them, resort shall be had to other persons (if any) who may have been present at the execution of the will or codicil; but if no affidavit of any such other person can be obtained, evidence on affidavit shall be procured of that fact and of the handwriting of the deceased and of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

Interlineations and alterations.  
N.S.W. r. 16.

9. When interlineations, erasures, alterations or obliterations appear in a will or codicil (unless duly executed, or recited in, or otherwise identified by the attestation clause), affidavits in proof of their having existed in the will or codicil before its execution shall be filed, except where the alterations are merely verbal and are evidenced by the initials of the attesting witnesses.

Deeds, &c., referred to in will.  
N.S.W. r. 17.

10. If a will or codicil contains a reference to any deed, paper, memorandum or other document of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will or codicil, the deed, paper, memorandum or other document must be produced with a view to ascertain whether it is entitled to probate; and, if not produced, its non-production shall be accounted for.

Appearance of the paper.  
N.S.W. r. 18.

11. If there are any vestiges of sealing-wax, or wafers, or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the testamentary papers, they shall be satisfactorily accounted for, or the paper, memorandum, or other document shall be produced, and, if not produced, its non-production shall be accounted for.

Affidavits in support of applications for administration with the will annexed.  
Vic. r. 6.

12. Every application for administration with the will annexed shall be supported by affidavits setting forth the particulars required by Rule 6 of these Rules so far as practicable, and also stating the character in which the person making the application claims to be entitled and the truth thereof.

Where will inoperative.  
Vic. r. 8.

13. Where a will is believed to be wholly or in part inoperative, the Court or the Registrar may require from the applicant a statement on oath showing what relatives or next of kin deceased left surviving him so far as is known and material by law to the right to administer or share in his property.

Application for administration.  
Vic. rr. 9 10.

14. Every application for administration of the estate of a deceased person dying intestate shall be supported by affidavits setting forth—

- (a) that the applicant, being a person, is of the full age of twenty-one years;
- (b) the death of the deceased and whether married or not;
- (c) the date of the death of the deceased;
- (d) that he died intestate, leaving property in the Territory, specifying its value, distinguishing real and personal, and stating shortly of what it consists;
- (e) what relatives or next of kin the deceased left surviving him, so far as that is known and material by law to the right to administer or share in his property.
- (f) the character in which the person making the application claims to be entitled, and the truth thereof;
- (g) if the applicant is a creditor, that fact and to what amount, and the particulars of his debt and the evidence in support thereof;
- (h) that the applicant has carefully inquired if there is a will;

- (i) that a search for a will deposited has been made in the Registrar-General's office and in the index, lodged in the Registrar-General's office, of wills deposited with the Public Trustee and in the office of any officer who may from time to time be authorized by law to register wills in the Territory;
- (j) that notice of intention to make the application has been published as prescribed;
- (k) that no caveat has been lodged up to the morning of the application; and
- (l) that no application for probate or administration in the matter has theretofore been made to or been granted by the Court or the Registrar; or, if any previous application has been made, the full particulars thereof.

15. A creditor who intends to apply for administration shall, before so applying, issue a citation calling upon the husband or widow and next of kin of the deceased to appear and show cause why administration should not be granted to him, and shall, before the return day of the citation, prove his debt before the Registrar.

Application by  
creditors.  
N.S.W. r. 11.

16. An applicant for representation in a matter where the Curator has obtained an order to collect shall give seven days' notice in writing to the Curator of the intended application, and shall, at the same time, lodge with the Curator for inspection, all documents in support of the application.

Applications  
where Curator  
has obtained  
order to  
collect.  
N.S.W. r. 12.

17. Upon every application for representation a notice of an address where all notices may be served shall be filed, and service at that address by registered letter, or as the Court or a Justice directs, shall be deemed sufficient service of any notice, notification or summons under the Ordinance, or under these Rules, unless the contrary intention appears in the Ordinance or these Rules.

Address for  
service.  
N.S.W. r. 14.

18. Where administration is applied for by one or some only of the persons entitled to administration, there being another or other next of kin equally entitled thereto, or a husband or widow of the deceased within the jurisdiction, their consent duly verified shall be filed or evidence shall be adduced of their having been served with notice of the application, or that they cannot be found;

Notice to other  
next of kin.  
N.S.W. r. 19.

Provided that where the husband or widow of the deceased applies, notice of the application shall be given to all the next of kin of the deceased of full age within the jurisdiction, or evidence shall be adduced that they cannot be found.

#### 19. Where—

- (1) An application for representation or to have the seal of the Court affixed to any probate or letters of administration, has been made to the Registrar; and
  - (a) a caveat against such application is subsequently lodged with the Registrar before the representation applied for has been granted; or
  - (b) it appears to the Registrar doubtful whether the application applied for should be granted; or
  - (c) the application is made under Part IV. of the Ordinance and the Registrar thinks it proper to be dealt with by the Court or it becomes necessary to obtain the directions of the Court; or
- (2) An application has been made to the Registrar under Section 16 of the Ordinance to dispense with one or both sureties to an administration bond or to direct that the penalty of any bond required to be executed shall be reduced in amount or that more bonds than one shall be given so as to limit the liability of any surety or to accept the bond of an incorporated company or guarantee society; and
  - (a) it appears doubtful to the Registrar whether he ought to do so; or
  - (b) any person interested in the estate or any creditor of the deceased has lodged with the Registrar notice in writing objecting thereto;

the Registrar shall serve on the applicant a notice in writing stating that he will not deal with the application and giving his reasons, and the applicant may then make the application to the Court by motion provided that a notice of motion is filed in the office of the Registrar at least seven clear days before the application comes on for hearing.

20. Where a copy of a notice of motion has been filed in the office of the Registrar in pursuance of the last preceding Rule, the Registrar shall forthwith transmit to the Registry at which it is stated in the notice of motion the application will be made, all affidavits and other documents that have been filed in his office relating to the application.

#### 4. ADMINISTRATION DURANTE MINORE AETATE.

Administration  
durante minore  
aetate.  
N.S.W. r. 20.

21. A grant of administration *durante minore aetate* may be made to guardians of infants for the use and benefit of the infants, subject to such limitations or conditions as the Court may order.

Election of  
guardian.  
N.S.W. r. 21.

22. Infants above the age of seven years may elect a guardian, but in other cases a guardian shall be assigned by the Court, and, upon any application by the guardian for administration, evidence of his election or assignment shall be produced.

Where there are  
infants both  
above and  
under age of  
seven years.  
N.S.W. r. 22.

23. In a family where there are infants both above and under the age of seven years, an elected guardian may not act for all the infants without special assignment.

#### 5. SMALL ESTATES.

Applications in  
the case of  
small estates.  
N.S.W. r. 39.

24.—(1.) Any person desiring to obtain a grant of representation in pursuance of Part IV. of the Ordinance, shall apply in person to the Registrar, but not by letter.

(2.) No such application shall be received through any agent of the applicant.

Fees.  
N.S.W. r. 40.

25.—(1.) The following fees shall be paid in advance by an applicant in pursuance of the last preceding rule:—

	£	s.	d.
Where estate does not exceed £50	0	10	0
On estates from £51 to £100	0	15	0
"    "    £101 to £150	1	0	0
"    "    £151 to £200	1	5	0
"    "    £201 to £250	1	10	0
"    "    £251 to £300	1	15	0
"    "    £301 to £350	2	0	0
"    "    £351 to £400	2	5	0
"    "    £401 to £450	2	10	0
"    "    £451 to £500	2	15	0

(2.) The fees specified in the last preceding sub-rule include payment for a copy of will, the charge made for a search for a will, and the costs incidental to the attestation of the execution of any bond.

Applications  
previously made  
through  
solicitor.  
N.S.W. r. 41.

26. Any application which has in the first instance been made through a solicitor shall not be entertained as a personal application.

Where  
directions of  
Court obtained.  
N.S.W. r. 42.

27. Whenever, in the opinion of the Registrar, it becomes necessary, in the course of a personal application, to obtain the directions of the Court, the application shall not be further proceeded with as a personal one except by leave of the Court.

Affidavits, &c.,  
to be filled up  
by Registrar.  
N.S.W. r. 43.

28.—(1.) All affidavits and other forms necessary to support the grant applied for shall be filled up by the Registrar if so desired.

(2.) Any further papers that may be required shall be prepared by the Registrar.

(3.) Testamentary papers deposited with the Registrar shall not be given out unless by order of a Justice.

Certificate of  
death to be  
produced.  
N.S.W. r. 44.

29. Every applicant for a first grant of representation shall produce a certificate of the death of the deceased, or give a reason to the satisfaction of the Registrar for the non-production thereof.

Engrossments  
of wills, &c.  
N.S.W. r. 45.

30. The engrossments of wills and testamentary papers shall be made in the office of the Registrar, and for the purpose of applications under Part IV. of the Ordinance, printed forms of probate or letters of administration may be used.

#### 5. ADMINISTRATION BONDS.

Bond.  
Vic. r. 20.

31. The bond of an ordinary administrator and his sureties shall be in accordance with Form 4 in the Schedule, and the bond of an administrator to whom administration has been granted as a creditor of the deceased shall be in accordance with Form 5 in the Schedule.

32.—(1.) Sureties to administration bonds shall justify by affidavits in accordance with Form 6 in the Schedule. Justification by affidavit. Vic. r. 21.

(2.) No such affidavit shall be attested by any person qualified to take affidavits who is the solicitor or the clerk of the solicitor of the person applying for the administration.

(3.) Every such affidavit shall specify the particulars of the property of the person making it, and the value of those particulars over and above his just debts and liabilities respectively, and shall be filed in the office of and laid before the Registrar, who, if not fully satisfied therewith, may require further information or assurance as to the sufficiency of the security, either by further affidavit or by the personal attendance and examination upon oath of the proposed surety.

33. Where the bond of an incorporated company or guarantee society approved by the Attorney-General is received as security instead of the security of individuals, the bond and condition shall be in the same form, substituting the name of the company or society for those of the individuals, and the Registrar before the issue of the letters of administration, shall satisfy himself of the due execution of the bond. Bond by incorporated company or guarantee society. Vic. r. 22.

34. An administrator shall not be allowed, as an expense of administration, the price he may pay for procuring the security either of individuals or of a company or society. Price for procuring security. Vic. r. 23.

#### 6. DELAY IN APPLICATION.

35. In every case where probate or administration is, for the first time, applied for after the lapse of six months from the death of the deceased, the reason for the delay shall be explained by affidavit when the application is made. Delay in applying representation. N.S.W. r. 27.

#### 7. CITATIONS.

36.—(1.) A citation shall not issue under the seal of the Court until an affidavit, in verification of the averments it contains, has been filed in the Registry from which such citation is to be issued nor shall it be made returnable in less than fourteen days from the service thereof, unless otherwise ordered by the Court. Citations. N.S.W. rr. 30.

(2.) Citations shall be served personally where practicable.

(3.) Personal service of a citation shall be effected by leaving a true copy thereof with the person cited and showing him the original, if required by him so to do.

#### 8. SALE AND MANAGEMENT OF REAL ESTATE.

37.—(1.) Notice of the application of an administrator under Section 51 of the Ordinance, or in a case of partial intestacy, of an executor or administrator with the will annexed, or of any person beneficially interested, shall be served personally on all parties beneficially interested unless that service is, upon application to the Court or a Justice dispensed with; but in case one party is an infant or is of unsound mind, and no guardian or committee of his person or estate has been appointed, or is out of the jurisdiction of the Court, or it is desired to serve notice on any such party within the jurisdiction of the Court in any other manner, or to dispense with service altogether, an application shall be made to a Justice in Chambers *ex parte* by the applicant for directions as to the manner and mode of the service or otherwise as to the Justice seems fit. Application as to time and mode of sale, &c., of real estate. N.S.W. rr. 37, 38.

(2.) Every such application shall be supported by affidavits setting out fully the circumstances of the case and the grounds upon which the order is applied for.

#### 9. INVENTORY AND ACCOUNTS.

38. Every executor and administrator shall, within three months after the grant of probate or administration, make or cause to be made a true and perfect inventory of all and singular the property, lands and hereditaments, goods, chattels and credits of the deceased which have come to the hands, possession or knowledge of any other person for the executor, or administrator, and lodge the inventory in the office of the Registrar. Filing of inventory. Vic. r. 25.

39. Subject to Rule 53 of these Rules, every executor and administrator shall, within twelve months after the grant of probate or administration—

- (a) file in the office of the Registrar his accounts relating to the estate of the deceased together with a plan of distribution where there is any balance available therefor unless he obtains a special order from the Court or a Justice or the Registrar extending the time for filing the accounts in which case he shall file the accounts within such extended time and shall at the time of filing the accounts take out an appointment for passing them; and
- (b) shall have the accounts passed on the day appointed for passing them or such other day as the Court, a Justice or the Registrar shall fix, unless the Registrar pursuant to Rule 47 hereof shall serve a notice on him stating that he will not pass the accounts.

Notice of filing  
accounts.  
N.S.W. rr. 49,  
50.

40.—(1.) Notice of the filing of the accounts of any executor or administrator, in accordance with Form 7 in the Schedule, and of the day fixed for passing the accounts, shall be published in a newspaper published and circulating in the Territory, fourteen days at least before the day fixed for passing the accounts, and if the executor or administrator intends to apply for commission, notice shall also be given of that intention.

(2.) In the case of an administrator, notice of the filing and of the application to pass his accounts shall also be served on the sureties to the administration bond.

Objection to  
passing of  
accounts.  
N.S.W. r. 51.

41. Any person desiring to object to the passing of the accounts of any executor or administrator, or the granting of commission, shall file with the Registrar, on or before the day fixed for the passing of the accounts, a notice of his intention to object, and also an affidavit stating his interest and the nature and grounds of his objection.

Order as to  
service on  
taking of  
accounts.

42. Upon taking the accounts, the Registrar may make such order as to service upon any of the parties interested as he thinks fit.

Persons  
interested may  
attend upon  
taking accounts.  
N.S.W. r. 53.

43. Any person interested may attend before the Registrar upon the taking of the accounts.

Certificate as  
to correctness  
of accounts.  
N.S.W. r. 54.

44. The Registrar shall give his certificate as to the correctness of the accounts, and also as to the amount on which commission is allowable.

Entry of  
accounts for  
allowance by  
Court.

45. Within fourteen days after the signing of the certificate by the Registrar, the accounting party shall, if he desires to be allowed commission, enter the accounts for allowance by the Court, and for allowance of commission.

Appeal from  
finding of  
Registrar.  
N.S.W. r. 56.

46. If the accounting party, or any person who has filed a notice of objection under Rule 41 of these Rules, desires to appeal from the finding of the Registrar on the passing of the accounts, he shall within seven days from the signing of the certificate by the Registrar, file a notice in the office of the Registrar, setting forth the nature and grounds of his appeal.

47. Where—

- (1) Accounts have been filed with the Registrar in pursuance of Rule 39 of these Rules; and

- (a) any doubt or difficulty arises; or
- (b) any person interested desires the matter referred to the Court;

the Registrar shall serve the accounting party with a notice in writing stating that he will not pass the accounts and giving his reasons and the accounting party may within fourteen days after the service of such notice apply to the Court or a Justice to pass the accounts.

48. Where the accounting party or any person has filed within the prescribed time a notice in the office of the Registrar setting forth the nature and grounds of his appeal pursuant to Rule 46 of these Rules, he shall within twenty-one days after filing such notice institute the appeal.

49. Every application to the Court under Rule 47 of these Rules to pass accounts and every institution of an appeal under Rule 48 of these Rules shall be made by Summons in Chambers and a copy of the Summons shall be served on the Registrar seven clear days before the return day thereof.

50. The Registrar forthwith after service on him of the copy of the Summons mentioned in the last preceding Rule shall transmit to the Registry from which the Summons has issued, all documents that have been filed in his office relating to the matter in respect of which the Summons has been issued.

51. The Court may order such persons as it thinks fit to be served with the Summons.

52. Should an accounting party, who has filed his accounts with the Registrar and who has been served with a notice in writing by the Registrar, stating that the Registrar will not pass such accounts, fail within the time prescribed by Rule 47 of these Rules, to apply to the Court to pass the accounts he shall for all purposes of the Ordinance and these Rules be deemed to have failed to comply with the provisions of Section 58 of the Ordinance and Rule 39 relating to the filing and passing of accounts.

53. In any case in which application is made by an executor or administrator to the Court or the Registrar for an order that the filing of the inventory mentioned in Section 58 of the Ordinance of the estate of the deceased and the passing of the accounts relating thereto by such executor or administrator be dispensed with and—

- (a) such executor or administrator is the only person who is beneficially entitled under the will of which he is executor or in distribution of the estate of which he is administrator; or
- (b) all persons who are beneficially entitled under the will of which he is executor or in distribution of the estate of which he is administrator are over the age of twenty-one years and consent to such order being made; and
- (c) in the case of an administration when there are sureties to the administration bond, such sureties consent;

the Court or the Registrar may make an order that the filing of such inventory of the estate of the deceased and the passing of the executor's or administrator's accounts relating thereto be dispensed with and upon the making of such order the executor or administrator shall cease to be under an obligation to file an inventory of the estate or to pass accounts relating thereto unless and until the Court otherwise directs.

#### 10. CAVEATS.

54.—(1.) Every caveat shall be in accordance with Form 8 in the Schedule and bear date of the day it is entered, and shall remain in force for the space of six months only and then expire; but a caveat may be renewed from time to time by lodging a new caveat.

(2.) Every caveat shall be signed, either by the caveator or his solicitor with his proper handwriting.

55. Upon the return of any order *nisi* under Section 34 of the Ordinance, it shall not be necessary for either party to prove his case by witnesses in the first instance, but the caveator shall state generally his ground of objection to the grant of representation, and, unless it be such as can be disposed of summarily, the Court shall fix a day for hearing or direct the case to be entered in a list of causes for hearing.

Return of  
order nisi.  
Vic. r. 27.

56. Within four days from a direction given in pursuance of the last preceding Rule, unless the Court otherwise orders, the caveator shall deliver to the party seeking representation particulars of objection in accordance with either of the forms set forth hereunder, according to the circumstances of the case.

Particulars of  
objection.  
Vic. r. 28.

##### *Particulars of Objection to Will—*

- (a) Later will or act of revocation and date thereof;
- (b) Not executed by testator;
- (c) Not executed in conformity with the Wills, Probate and Administration Act 1898 of the State of New South Wales in its application to the Territory;
- (d) Want of testamentary capacity—
  - (i) confined to the period shortly before and at the time of execution;
  - (ii) existing before that period, and due to insanity or imbecility of which the symptoms first manifested themselves at a date to be set out; or
- (e) Undue influence and by whom exercised.

*Particulars of Objections to Grant of Administration of Intestacy—*

- (a) A will and date thereof;
- (b) The person applying does not fill the capacity or stand in the relationship in which he seeks administration;
- (c) The caveator or some other person seeking administration has a better right, stating the nature thereof; or
- (d) The proposed administrator is disqualified, and, if so, how.

Special grounds  
of objection.  
Vic. r. 29.

57.—(1.) The caveator shall also state in the particulars any special grounds of objection not included in those specified in the last preceding rule, and shall not, without the leave of the Court, raise any objection not stated in the particulars.

(2.) The Court shall, at its discretion, direct the mode of proceeding at the hearing as to right to begin rebutting case and otherwise.

Witnesses.  
Vic. r. 30.

58. Where an order is made fixing a time for shewing cause against an order *nisi* under Section 34 of the Ordinance, both parties may subpoena their witnesses for the hearing in the same manner as in an action before the Court.

Affidavits to  
be filed and  
notice served.  
Vic. r. 31.

59. Either party shall, four clear days before the day appointed for hearing, file in the Registry of the Court in which the cause is to be shewn, any affidavits he proposes to use at the hearing, and serve notice of the filing thereof upon the opposite party; and the opposite party, desiring to cross-examine a deponent, shall, two clear days before the day appointed for hearing, serve a notice requiring the production of the deponent for cross-examination:

Provided that the Court may, at its discretion, specially order variations from this Rule.

Discovery and  
inspection of  
documents.  
Vic. r. 32.

60. Upon the return of any order *nisi* under Section 34 of the Ordinance, the Court may, in its discretion, order that the parties, or either of them, shall make discovery upon oath of all documents which are or have been in their or his possession, power, custody or control, or which were in the possession, power, custody or control of the testator or intestate at the time of his death relating to any matter in dispute in the cause and inspection thereof, or make any other order for the conduct of the hearing that the Court in its discretion thinks fit.

11. REVOCATION OF REPRESENTATION.

Suits for  
revocation of  
probate or  
administration.  
N.S.W. r. 71.

61. In a suit for the revocation of probate or administration, proceedings shall be commenced by the issue of a citation against the party to whom the grant was made, requiring him to bring in and deposit the grant in the Registry from which the citation issued; and, within fourteen days after notice of the deposit, the party issuing the citation shall file his statement of claim against the party cited, who shall be the defendant in the suit, and all subsequent proceedings shall be had and taken as in a contested suit for probate.

12. ADMINISTRATION BY CURATOR.

Application to  
collect.  
N.S.W. r. 76.

62.—(1.) An application by the Curator to collect the estate of any deceased person shall be supported by affidavits setting forth—

- (a) the death of the party;
- (b) the time and place thereof;
- (c) whether testate or intestate;
- (d) whether leaving real or personal estate within the Territory;
- (e) that search has been made for a will of deceased in the office of the Registrar-General and in the index lodged in the office of the Registrar-General of wills, deposited with the Public Trustee, and in the office of any officer who may from time to time be authorized by law to register wills in the Territory;
- (f) whether any widow or next of kin; and
- (g) any other particulars which may be deemed necessary.

(2.) For the purposes of this Rule, Forms 9, 10 and 11 in the Schedule shall be used, as circumstances require.

Renunciation of  
probate in  
favour of  
Curator.  
N.S.W. r. 77.

63. Where the executors named in the will of a deceased person renounce probate in favour of the Curator, the renunciation shall be in accordance with Form 12 of the Schedule.

Persons  
declining to  
apply for  
administration.  
N.S.W. r. 78.

64. Where the persons primarily entitled to administration decline so to apply, with a view to the Curator applying therefor they shall file in the office of the Curator a document in accordance with Form 13 in the Schedule.



65. Every applicant for probate of the will or administration of the estate of a deceased person whose estate the Curator has obtained an order to collect, shall give seven days' notice in writing to the Curator of his intended application in accordance with Form 14 in the Schedule, and shall at the same time lodge with the Curator for inspection the documents in support of the application.

Notice of  
intended  
application for  
probate, &c.  
N.S.W. r. 79.

66. Whenever it is necessary to take any steps in connexion with any estate being administered by the Curator, and whether the Curator is a party thereto or not, every application, affidavit, summons or other process shall be filed in the office of the Curator; and any *ex parte* order calling upon the Curator to show cause obtained under Section 95 of the Ordinance shall state whether proof shall be given orally or upon affidavit.

Petitions, &c.,  
to be filed in  
office of  
Curator.  
N.S.W. r. 80.

67. Upon the filing of the Order and affidavits, it shall not be necessary for the Curator to serve copies of any affidavits made by him in reply; but he shall notify to the person obtaining the order the fact of the affidavits having been filed, and that copies thereof may be obtained upon payment of the ordinary fees as prescribed.

Notification by  
Curator.  
N.S.W. r. 81.

68. The Curator may refer for taxation any bill of costs that has been incurred by him in the administration of any estate, and the certificate of the Taxing Officer of the taxation shall be conclusive.

Bills of Costs.  
N.S.W. r. 87.

### 13. MAINTENANCE OF WIDOWS AND YOUNG CHILDREN.

69. Notice of any application under Section 111 of the Ordinance shall be served on the executor of the will of the deceased person or on the administrator with the will annexed of the deceased person.

### 14. MISCELLANEOUS.

70.—(1.) The Court or a Justice shall have power to enlarge or abridge the time for doing any act or taking any step to adjourn or review any proceeding, and to give any direction as to the cause of proceeding.

Enlargement or  
abridgement of  
time.  
N.S.W. r. 89

(2.) Time may be enlarged notwithstanding that it has already expired.

71. If personal service of any proceedings cannot be effected by reason of the absence from the Territory of the person to be served, or if the Court or a Justice is satisfied by affidavit or other evidence on oath that that person is keeping out of the way to avoid service, or that for any other cause prompt personal service cannot be effected, the Court or Justice may order substituted service to be made by the delivery of the proceedings to some adult inmate of his usual or last known residence or place of business, or by registered letter, or in such other manner as the Court may direct.

Substituted  
service.  
N.S.W. r. 92.

72. The acknowledgment which may be signed by an executor or administrator in pursuance of Section 56 of the Ordinance shall be in accordance with Form 15 in the Schedule.

Form of  
acknowledg-  
ment under  
Section 56 of  
Ordinance.  
N.S.W. r. 68.

73. Where in any Registry any order is made relating to any matter arising under the Ordinance or the Rules applicable to matters arising under the Ordinance, the Registrar or District Registrar of that Registry shall transmit a copy of the order to the Registrar of Probates and Administrations.

## THE SCHEDULE.

Rule 3.

FORM 1

### NOTICE FOR PROBATE.

In the High Court of  
Australia.

Probate Jurisdiction in the Territory  
for the Seat of Government.

In the Will of \_\_\_\_\_, late of \_\_\_\_\_, deceased.

Application will be made after fourteen days from the publication hereof, that probate of the last will of the above-named deceased may be granted to \_\_\_\_\_, the executor named in the said Will, and all notices may be served at

(Solicitor)

(Address)

## NOTICE FOR ADMINISTRATION.

(Heading as in Form 1.)

In the Estate of , late of , deceased (intestate).

Application will be made after fourteen days from the publication hereof, that administration of the estate of the above-named deceased may be granted to , the widow (or as the case may be) of the said deceased, and all notices may be served at

(Solicitor)

(Address)

## NOTICE FOR SEALING FOREIGN GRANTS.

(Heading as in Form 1.)

In the Will (or Estate) of , late of , deceased.

Application will be made after fourteen days from the publication hereof, that the probate (or letter of administration) granted in respect of the above estate, may be sealed with the seal of this Court, and all notices may be served at

(Solicitor)

(Address)

## ADMINISTRATION BOND.

Know all men by these presents that we—

, of

, of

, of

are jointly and severally held and firmly bound to

the Registrar of Probates and Administrations under the *Administration and Probate Ordinance* 1929-1930 his successors and assigns, in the sum of to be paid to the said Registrar of Probates and Administrations, his successors and assigns, for the due payment whereof we hereby bind ourselves and each and any two of us, our heirs, executors, and administrators firmly by these presents.

Dated this day of in the year of our Lord One thousand nine hundred and

The condition of this obligation is such that if the said

the administrator of all and singular the property of late of deceased, do and shall well and truly collect and administer according to law the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death which shall come to the power or control, hands, or possession of him as his administrator, or of any other person or persons for him, and do and shall make or cause to be made a true and perfect inventory of all and singular the property, lands, and hereditaments, goods, chattels and credits of the said deceased, which shall have come to the hands, possession, or knowledge of him, or the hands or possession of any other person or persons for him, and the same so made do and shall sign with his proper handwriting (or mark), and do and shall exhibit and deposit, or cause to be exhibited and deposited, the same inventory in the office of the Registrar of Probates and Administrations, within three calendar months next ensuing the order granting letters of administration; and further do and shall make or cause to be made a true and just account of the administration of the estate which he shall have undertaken so to administer, his receipts and disbursements, and as to what portion shall be retained by him, and what portion shall remain uncollected, and the same so made do and shall sign with his proper handwriting (or mark), and do and shall exhibit and deposit, or cause to be exhibited and deposited, the same account in the said office of the Registrar, within twelve calendar months next ensuing the order granting letters of administration; then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered, &amp;c.

## CREDITOR'S ADMINISTRATION BOND.

Know all men (&amp;c., as in usual form)—

The condition of this obligation is such that if the said C.D., a creditor and administrator of all and singular the property of A.B., late of

, who died at

the day of , 19 , do and shall well and truly collect and administer according to law the property, lands, and hereditaments, goods, chattels, and credits of the said deceased at the time of his death which shall come to the power or control, hands, or possession of him as such administrator, or of any other person or persons for him, and do and shall out of the said property, lands, and hereditaments, goods, chattels, and credits of the said deceased in a due course of administration rateably and proportionately and according to the priority required by law, and not unduly preferring his own debt or debts of any other of the creditors of the said deceased by reason of his being administrator as aforesaid, and do and shall make or cause to be made a true and perfect inventory of all and singular (and then as in usual form).

(Heading as in Form 1.)

In the Estate of \_\_\_\_\_, late of \_\_\_\_\_, in the  
Territory for the Seat of Government, deceased (intestate).  
I, \_\_\_\_\_, of \_\_\_\_\_, in the  
Territory for the Seat of Government, make oath and say—

1. That I am after payment of all my just debts and liabilities well and truly worth in real and personal property (or as the case may be) the sum of £ \_\_\_\_\_

2. That the particulars of my property and the values thereof are as follow:—

The gross value at which property of deceased was sworn.

(NOTE.—In setting out the property realty must be distinguished from personalty and a separate gross value for each particular parcel or item thereof must be stated.)

(a) When realty, the location, the area of the land, whether there are buildings on the land, should be stated with sufficient accuracy to identify the land.

(b) When personalty, the following particulars should be given, for example:—

- (1) Description of lease and number of years to run.
- (2) Number of shares in bank, building society, trading company, &c.
- (3) Money on deposit or current account, giving name and address of bank, society, &c.
- (4) Money lent on mortgage and registered number of same.
- (5) Household furniture and where kept.
- (6) Stock in trade of a business and premises wherein kept.
- (7) Farming implements, &c., where kept, and grain, quantity, and where stored.
- (8) Policy of life insurance, number of years in force with surrender value, and age of surety at time of making his affidavit.
- (9) Live-stock, number and kind and where depastured or kept.
- (10) Good book debts only.

(Cash in hand or in house will not be accepted as sufficient.)

3. That I am not surety in any other matter (or if a surety in any other matter state in what matter and to what amount).

Signed and sworn by the above-named deponent at \_\_\_\_\_  
in the Territory for the Seat of Government this \_\_\_\_\_

(L.S.) day of \_\_\_\_\_ One thousand nine hundred \_\_\_\_\_  
and \_\_\_\_\_ before me—  
(Title of person taking affidavit.)

(Heading as in Form 1.)

In the Estate of \_\_\_\_\_

Notice is hereby given that the accounts in the above estate have this day been filed in my office, and all persons having any claim on the said estate, or being otherwise interested therein, are hereby required to come in before me at my said office on or before the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_-noon and inspect the same and if they shall think fit object thereto; otherwise if the said accounts be not objected to, the same will be examined by me and passed according to law. And notice is also hereby given that on the allowance of the said accounts by the Court, commission will be applied for on behalf of the said executor (or administrator)\*.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ in the year One thousand nine hundred and \_\_\_\_\_

—Registrar.

\* Words in italics to be added if Commission applied for.

Take notice that I (name of caveator in full) of (address and description in full) claiming interest (state relationship or particulars of interest) in the estate of (or under the will of—set out full description) do hereby demand that nothing be done therein without notice to me.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

(Signature of caveator or his solicitor.)

Witness—

(Heading as in Form 1.)

In the matter of the Intestate Estate of \_\_\_\_\_ late of \_\_\_\_\_, deceased.

I, \_\_\_\_\_, of \_\_\_\_\_, in the Territory for the Seat of Government, make oath, and say as follows:—

1. The said \_\_\_\_\_ departed this life at \_\_\_\_\_ on or about the \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_, intestate, and having at the time of his death \_\_\_\_\_ estate in the said Territory liable to waste

2. The said deceased died without leaving any widow or next of kin resident within the said Territory.

Signed and Sworn by the above-named deponent, at \_\_\_\_\_ in the Territory for the the Seat of Government, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, before me—

(Title of person taking affidavit.)

(If deceased left a widow or next of kin resident out of jurisdiction of the Territory, insert particulars of the same.)

Rule 62.

Form 10.

(Heading as in Form 1.)

In the matter of the Will of , late of , deceased.

I , of , in the Territory for the Seat of Government, Curator of Deceased Persons' Estates, make oath and says as follows:—

1. I am informed, and verily believe, that the said deceased died at , on or about the day of , 19 , as appears by the of death hereto attached, marked A.
2. I verily believe the paper writing hereto annexed, bearing date the day of , 19 , and marked B, to be the last will and testament of the said deceased, and that by the said will appointed executors thereof.
3. The said executor renounced the trusts of the said will, as appears by the deed of renunciation marked annexed to the affidavit of , sworn herein, this day of , 19 , and filed in support of this application.

Signed and Sworn by the above-named deponent, at , in the Territory for the the Seat of Government, this day of , 19 , before me—

Rule 62.

Form 11.

(Heading as in Form 1.)

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

I , of , in the Territory for the Seat of Government, make oath, and says as follows:—

1. I have searched in the proper office of the Registrar-General and in the index lodged in the office of the Registrar-General of wills deposited with the Public Trustee and in the office of any officer authorized by law to register wills in the Territory and cannot find that any will of the above-named deceased remains deposited therein.

Signed and Sworn by the above-named deponent at , this day of , 19 , before me—

(Title of person taking affidavit.)

Rule 63.

Form 12.

RENUNCIATION OF PROBATE IN FAVOUR OF CURATOR.

(Heading as in Form 1.)

In the matter of the Will of , late of , deceased.

Whereas , late of , deceased, died on the day of , at his last will and testament, bearing date the day of , 19 , and thereof appointed executor:

Now I the said do hereby declare that I have not intermeddled in the real or personal estate of the said deceased, and will not hereafter intermeddle therein and do hereby expressly renounce all my right and title to probate and execution of the said will and to the trusts, powers, and authorities whatsoever by the said , and hereby request the Curator of Estates of Deceased Persons to apply for an order to collect the estate of the said deceased, with the will of said annexed.

In witness whereof have hereunto set hand and seal this day of , 19 .

Signed, sealed and delivered by the said in the presence of—

Rule 64.

Form 13.

RENUNCIATION OF LETTERS OF ADMINISTRATION IN FAVOUR OF CURATOR.

(Heading as in Form 1.)

In the matter of the Estate of , late of , deceased (intestate).

Whereas , late of , deceased, died on the day of , 19 , at his only intestate, a widower, leaving him surviving

Now, I the said do hereby renounce all right and title to letters of administration of the real and personal estate of the said deceased, and request the Curator of Estates of Deceased Persons to administer the said estate.

Signed by the said , on the day of , 19 , in the presence of—

Rule 65.

FORM 14.

NOTICE OF APPLICATION FOR REPRESENTATION TO BE  
GIVEN BY CURATOR.

(Heading as in Form 1.)

To the Curator of Estates of Deceased Persons.

You are hereby requested to take notice that application will be made to the High Court of Australia, in its Jurisdiction under the *Probate and Administration Ordinance 1929-1930* of the Territory for the Seat of Government, on the \_\_\_\_\_ day of \_\_\_\_\_, or so soon thereafter as the same can be heard, for probate of the will (or letters of administration, as the case may be) of the estate of A.B., late of \_\_\_\_\_ deceased, who died on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ (intestate).

Proctor for C.D.,  
a (brother) of the said deceased.  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Rule 72.

FORM 15.

ACKNOWLEDGMENT UNDER SECTION 56 OF ORDINANCE.

Acknowledgment made under the *Administration and Probate Ordinance 1929-1930*, between (name or names) executor (or executors) of the duly proved will (or administrator (or administrators) with the will annexed), of (name) late of (address and occupation as in Will) deceased, of the one part, and (name or names) devisee or devisees) under the said Will, of the other part whereby the said executor (or executors or administrator or administrators) doth (or do) acknowledge that the said devisee (or devisees) is (or are) entitled for the estate for which the same is devised to him (or them) by the said Will to the real estate described in the said Will as (describe as in Will).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Signature or signatures of executor or executors or  
administrator or administrators.)

Witness—