

37/82

IN THE PRIVY COUNCIL

No. 4 of 1982

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O N A P P E A L  
FROM THE COURT OF APPEAL OF FIJI

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B E T W E E N :

FIJI RESORTS LIMITED

APPELLANT  
(Original Defendant)

- a n d -

THE COMMISSIONER OF ESTATE  
AND GIFT DUTIES

RESPONDENT  
(Original Plaintiff)

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SUPPLEMENTAL CASE FOR THE RESPONDENT

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Messrs Charles Russell  
& Company  
Hale Court  
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LONDON WC2A 3UL

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Solicitors for the Appellant

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O N A P P E A L  
FROM THE COURT OF APPEAL OF FIJI

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B E T W E E N :

FIJI RESORTS LIMITED APPELLANT  
(A LIMITED LIABILITY COMPANY)  
INCORPORATED IN FIJI)

- a n d -

THE COMMISSIONER OF ESTATE  
AND GIFT DUTIES RESPONDENT

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SUPPLEMENTAL CASE FOR THE RESPONDENT

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THE CIRCUMSTANCES OUT OF WHICH  
THE APPEAL ARISES RECORD

THE NATURE OF THE APPEAL

1. This appeal is brought by special leave of Her Majesty in Council. It is an appeal from the judgment of the Court of Appeal of Fiji (Marsack V.P., Henry J.A. and Spring J.A.) given on 3 August 1978, whereby p. 10  
the Court of Appeal dismissed an appeal by the Appellant from the judgment of Stuart J. p. 1  
in the Supreme Court of Fiji given on 9 November 1977. The formal order of the Supreme Court was:

"The defendant [present Appellant] do deliver to the Commissioner of Estate and Gift Duties a statement as required by Section 28(1) of the Estate and Gift Duties Act . . . . and show cause why the said defendant [present Appellant] should not pay the duty assessed by the Commissioner."

THE BACKGROUND FACTS

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2. Alan Emmett Davis, a citizen of the United States of America, died at Lautoka, Fiji, on 28 February 1972. Prior to his death he had been domiciled in the State of California. p. 2

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3. Mr Davis left a will naming as his executor the First National Bank of San Jose (in California). At the date of his death, there were registered in Mr Davis's name alone 25,180 shares of \$2 each in a Fiji registered company, Yanuca Island Limited. In addition, there were registered in the joint names of Mr Davis and his wife 37,354 shares of \$1 each in another Fiji registered company, Fiji Mocambo Holdings Limited. p. 3  
p. 2

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4. The shares referred to in paragraph 3 above were, subsequent to Mr Davis's death and pursuant to schemes of arrangement sanctioned by the Supreme Court of Fiji prior to his death, converted into shares in the Appellant as follows:

(a) The shares in Yanuca Island Limited were converted into 131,661 shares of \$1 each in the Appellant; and

(b) The shares in Fiji Mocambo Holdings Limited were converted into 101,404 shares of \$1 each in the Appellant.

5. Following Mr Davis's death a further 56,281 shares in the Appellant were acquired. p. 2

6. On 26 September 1973, 187,942 shares in the Appellant, being the total of the shares referred to in paragraphs 4(a) and 5 above, were sold to Qantas Airways Limited. p. 3  
The transfers relating to these shares were stamped on 27 September 1973 and were registered by the Appellant.

7. Also on 26 September 1973, 95,123 shares in the Appellant, being a proportion of the shares referred to in paragraph 4(b) above, were sold to Qantas Airways Limited. p. 3  
The transfers relating to these shares were stamped on 27 September 1973 and were registered by the Appellant.

8. On 18 April 1974, 1,500 shares in the Appellant, being a further proportion of the shares referred to in paragraph 4(b) above, were sold to McClintock Metal Fabricators Inc. The transfers relating to these shares were stamped on 19 April 1974 and were registered by the Appellant. p. 3

9. At the time of the registration of the transfers referred to in paragraphs 6, 7 and 8 above, probate of the will of Mr Davis had been granted in California to the First National Bank of San Jose p. 3

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but probate of Mr Davis's will had not been granted in Fiji.

10. On 17 September 1976, the Respondent commenced proceedings against the Appellant in the Supreme Court of Fiji (Action No. 205 of 1976) seeking inter alia an order against the Appellant under section 31(1) of the Estate and Gift Duties Act.

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11. On 29 November 1976, probate of Mr Davis's will was granted out of the Supreme Court of Fiji to the First National Bank of San Jose. Probate is currently held by the Respondent. p. 3

12. By consent of the parties to Action No. 205 of 1976, and with the concurrence of the Supreme Court of Fiji, the proceedings were divided into 2 parts of which this supplemental case relates to the 'first part'. p. 2

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13. The Respondent's petition for special leave for appeal out of time to Her Majesty in Council from the judgment of the Court of Appeal of Fiji on the 'first part' stated 2 grounds of appeal, namely:

- (1) That the decision of the House of Lords in The New York Breweries Company Limited v. The Attorney-General, [1899] AC 62, as relied upon by the Supreme Court of Fiji and the Court of Appeal of Fiji, is ". . . distinguishable because there the

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company registering the transfers knew that the foreign executor had not taken out probate in the United Kingdom and did not intend to do so"; and

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- (2) That the action of the Appellant in registering the transfers was validated by statutory relation back of the executor's title upon the grant of probate in Fiji, under Section 9 of the Succession Probate and Administration Act 1970.

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These grounds constitute the matters for decision in this appeal. They involve the construction and application of the Estate and Gift Duties Act (Fiji), a copy of which is annexed as Appendix "A" to the Case on Appeal, and the Succession Probate and Administration Act (Fiji) a copy of which is annexed as Appendix "A" hereto.

The statutory provisions relevant to the present appeal are as follows:

ESTATE AND GIFT DUTIES ACT

2. In this Ordinance, unless the context otherwise requires— Interpreta-  
tion

"administration" means any probate, letters of administration, rule or order of the Supreme Court, or any other document whereby any person becomes entitled at law to administer the estate of a deceased person or any part of his estate, and includes all probates or letters of administration granted out of Fiji, and all exemplifications thereof, if those probates, letters of administration or exemplifications have been resealed in Fiji;

"administrator" means any person to whom any probate or letters of administration have been granted or who is entitled, by virtue of any other administration, to administer the estate of a deceased person or any part of his estate;

Prohibition  
on dealing  
with joint  
assets.

6. (1) Where any shares, debentures, money on fixed deposit, policy of life assurance, or any other property, or money in any bank (in this section referred to as "assets") in the name of any deceased person are held jointly with any other person as owner, no person shall deal with such assets by way of registration or in any manner whatsoever unless the Commissioner certifies in writing that no duty is payable in respect of such assets or that all duties in respect of such assets payable by reason of any increase of benefit or any accruing beneficial interest by reason of the said death, have been paid, or that proper security has been given for the payment thereof:

Provided that the Commissioner may authorise in writing any such dealing in such manner as shall to him appear to be reasonable in order to meet the normal living expenses of the survivor of the joint owners or the normal expenses of carrying on a business.

(2) Where no duty is payable in respect of such assets or when all duties mentioned in the last preceding subsection shall have been paid or when security to the extent required by the Commissioner shall have been given for the payment thereof, the Commissioner shall give any such certificate as aforesaid. The certificate may be given in any form approved by the Commissioner.

(3) Any person dealing with such assets before a certificate has been given by the Commissioner in accordance with the provisions of subsection (1) of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds.

Statements  
to be  
delivered to  
Commissioner  
by  
administrator.

23. (1) In order to ascertain the amount payable as estate duty under the provisions of this Ordinance every administrator shall, within six months from the grant of administration, deliver to the Commissioner a statement in writing in the prescribed form, or in such form as the Commissioner may, in his discretion, permit, containing the prescribed particulars with respect to the dutiable estate of the deceased and with respect to the interests of the several successors of the deceased and containing such other particulars, if any, as may be prescribed for the purposes of this Ordinance.

(2) The Commissioner may, upon application, extend the time within which such statement must be delivered, and may also permit or require the statement to be amended.

(3) Every such statement and every amendment thereof shall be verified by statutory declaration in the prescribed form and manner.

(4) Any administrator who fails to deliver a statement to the Commissioner within the time prescribed by this section or to deliver an amended statement when required by the Commissioner so to do shall be liable to a fine of fifty pounds.

(5) No administrator shall be exempt from the requirements of this section on the ground that no estate duty is payable.

Dealing  
with estate  
of deceased  
person  
without  
administra-  
tion.

31. (1) If any person takes possession of or in any manner deals with any part of the estate of any deceased person without obtaining administration of his estate within six months after his decease, or within two months after the termination of any action or dispute respecting the grant of administration of the estate, or within such further time as may be allowed by the Commissioner on application, the Commissioner may apply to the Supreme Court for an order that the person so taking possession or dealing as aforesaid deliver to the Commissioner within such time as the Commissioner may determine, a statement as required by subsection (1) of section 28 of this Ordinance, and to pay such duty as would have been payable if administration had been obtained, together with the cost of the proceedings, or to show cause to the contrary.

(2) If no cause or no sufficient cause is shown to the contrary, the person so offending shall, in addition to the duty payable by him as aforesaid, forfeit a sum not exceeding five hundred pounds, in the discretion of the Supreme Court; but if cause is shown, such order shall be as seems just.

(3) Nothing in this section or elsewhere in this Ordinance shall affect the special provisions of any enactment for the time being in force authorising the payment of money belonging to the estate of any deceased person without requiring administration of the estate to be obtained.

Delivery of  
false state-  
ment an  
offence.

59. (1) Every person who makes or delivers or causes or permits to be made or delivered to the Commissioner any document which he knows to be false in any particular, or knowingly makes a false answer whether orally or in writing to any question duly put to him by the Commissioner or any officer duly authorised by the Commissioner shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds.

(2) A prosecution for an offence against the provisions of the last preceding subsection may be commenced at any time.



SUCCESSION, PROBATE AND ADMINISTRATION ACT

*Upon grant of probate or administration property to vest*

9. Upon the grant of probate or administration, all property of which a deceased person dies possessed, or entitled to, in Fiji shall, as from the death of such person, pass to and become vested in the executor to whom probate has been granted, or administrator for all the estate and interest of the deceased therein, in the manner following, that is to say—

- (a) on testacy or on partial intestacy, in the executor or administrator with the will annexed; and
- (b) on intestacy, in the administrator.

The following are relevant provisions of the Appellant's articles of association:

10 "34. The legal personal representative of a deceased sole holder of a share shall be the only person recognised by the Company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivor or survivors, or the legal personal representatives of the deceased survivor, shall be the only persons recognised by the Company as having any title to the share.

0 35. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the Directors have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the Directors shall in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy."

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CONTENTIONS OF THE RESPONDENT

- (1) That the Supreme Court and the Court of Appeal were correct in holding that the Respondent was entitled to an order under section 31 of the Estate and Gift Duties Act

The requirements of section 31 of the Estate and Gift Duties Act are satisfied if it is sufficiently demonstrated that:

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- (a) The Appellant took possession of, or dealt with, the shares referred to in paragraphs 6, 7 and 8 above; and
- (b) The Appellant had not obtained administration of Mr Davis's estate before so doing.

Both these requirements were fully satisfied in this case and the Appellant on this appeal raises no challenge on either point.

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The New York Breweries Limited v. Attorney-General [1899] A.C. 62, HL, per Earl of Halsbury L.C., at 68-70, per Lord Watson, at 73, and per Lord Davey, at 77.

There are no other conditions for the application of section 31. Both courts below correctly interpreted and applied section 31, a section clearly inserted in the Act for the protection of the public revenue.

(2) That it is not a pre-condition of the making of an order under section 31 of the Estate and Gift Duties Act that the Appellant must first have known that the executor of the deceased did not intend to take out probate in Fiji

10 (a) In the circumstances, the Appellant, by registering the transfers as set out in paragraphs 6, 7 and 8 herein, acted as executor de son tort. Its state of knowledge at the time was and is irrelevant. Section 31 contains nothing which makes guilty knowledge on the part of the Appellant a pre-condition for the obtaining of an order under section 31.

20 The Attorney-General v. The New York Breweries Company Limited [1898] 1 Q.B. 205, C.A., per A.L. Smith L.J., at 217 and per Collins L.J., at 224;

The New York Breweries Company Limited v. The Attorney-General [1899] A.C. 62, per Earl of Halsbury L.C., at 70-1; Sharland v. Mildon (1846) 1 Hare. 468, 67 E.R. 997;

Hill v. Curtis (1865) L.R. 1 Eq. 90, at 99; and

McCormack v. Lee [1941] NZLR 114.

30 (b) It is the fact of the intermeddling by an executor de son tort, that is, the fact of the Appellant's taking possession of and dealing with the shares referred to in paragraphs 6,

7 and 8 herein which attracts the operation of section 31 of the Estate and Gift Duties Act and not any consideration relating to the Appellant's knowledge or motive.

Commissioners of Inland Revenue v. Stype Investments (Jersey) Limited, unreported, Court of Appeal, 1980 C. No. 8322, 7 April 1982, at pp. 17, 18 and 26 of the transcript of the Court's judgment.

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(c) The absence of any requirement as to guilty knowledge on the part of the Appellant in section 31 of the Estate and Gift Duties Act may be contrasted with the presence of such a requirement in section 59 of the Act.

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(d) In any event, there has in this case been no finding whatsoever to the effect that the Appellant knew, at the time that it registered the transfers referred to in paragraphs 6, 7 and 8 herein, that Mr Davis's executor would take out probate in Fiji. Any such finding would have been irrelevant to the operation of section 31, but it is recorded that there never was any such finding, nor was any evidence adduced on which such a finding could have been based.

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(e) The evidence and the findings based upon the evidence demonstrate that the Appellant, in registering the shares as aforesaid:

(i) Did so in violation of its own articles of association. Articles 34 and 35 of the Appellant. (Likewise in the case of The New York Breweries Company Ltd v. The Attorney-General [1899] A.C. 62, at 70);

(ii) Committed a criminal offence under section 6 of the Estate and Gift Duties Act in relation to the transfer of certain of the shares; and

(iii) Knew full well at the time of the transfers that it had not obtained administration of Mr Davis's estate.

(3) That the actions of the Appellant in registering the share transfers referred to in paragraphs 6, 7 and 8 above were not validated, and could not be validated, by statutory relation back of the executor's title upon the grant of probate in Fiji.

(a) Section 9 of the Succession Probate and Administration Act does not assist the Appellant. It is concerned with the passing of the property of the deceased to the executor to whom probate has been granted. It does not affect the prior operation of section 31 of the Estate and Gift Duties Act in a case, such as this, where an executor de son tort has taken possession of, and dealt with, part of the estate of a deceased person

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before probate of his will has been granted in Fiji.

- 10 (b) If the Appellant's submission is that the Appellant, in registering the share transfers, was acting as the agent of Mr Davis's executor in California, this is wrong on the ground that no finding of fact was made in the Courts below to the effect that the Appellant was acting as the agent of Mr Davis's executor at the time it registered the share transfers referred to paragraphs 6, 7 and 8 above. Indeed, the Supreme Court and the Court of Appeal of Fiji found to the contrary. Compare Sykes v. Sykes (1870) LR 5 CP 113, where the jury had found that William Shaw had been in possession of the goods seized by the sheriff as agent for Albert Sykes and Hannah Shaw (executor and executrix under the will of Ellen Sykes, deceased).
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- 30 (c) In any event, the Appellant could not account to the rightful representative before these proceedings were commenced and therefore dealt with the property of the deceased as executor de son tort (see paragraphs 10 & 11 above) as prior to the grant of probate to Mr Davis's executor in Fiji, there was no such rightful representative in Fiji.

Padget v. Priest (1787) 2 TR 97,  
100 ER 53, per Buller J., at  
100,55;

Hill v. Curtis (1865) L.R. 1  
Eq. 90; and

Commissioners of Inland Revenue  
v. Stype Investments (Jersey)  
Limited, unreported, Court of  
Appeal, 1980 C. No. 8322,  
7 April 1982, at pp. 17 and 18 of  
the transcript of the Court's  
judgment.

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- (d) Any action by Mr Davis's (California)  
executor prior to probate being  
granted to the executor in Fiji  
could not have been effective to  
ratify the Appellant's actions in  
registering the share transfers:  
Halsbury's Laws of England,  
4th ed., Vol. 17, para. 736.

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- (e) Even if any purported ratification of  
the Appellant's actions by Mr Davis's  
executor had occurred after the  
executor had obtained probate in Fiji,  
this could not validate actions of  
the Appellant which were ultra vires  
its own articles of association  
and which also, in relation to  
certain of the transfers,  
constituted criminal conduct:  
Spackman v. Evans (1868) LR 3 HL  
171, at 244.

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The Respondent therefore humbly submits that this appeal should be dismissed and that the judgment of the Court of Appeal of Fiji should be affirmed for the reason that the order made against the Appellant under section 31 of the Estate and Gift Duties Act was properly made.

*R. A. Green*

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Counsel for the Respondent

*M. Congreve*

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Counsel for the Respondent



APPENDIX A

CHAPTER 60

SUCCESSION, PROBATE AND ADMINISTRATION ACT

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

SECTION

1. Short title.
2. Interpretation.

PART II—JURISDICTION OF THE COURT

3. Jurisdiction of court.
4. Duties of Registrar.

PART III—DISTRIBUTION ON INTESTACY

5. Distribution of real and personal estate of intestate.
6. Succession to property on intestacy.

PART IV—GRANTS OF LETTERS OF ADMINISTRATION

7. Persons entitled to grant.

PART V—PROBATE AND ADMINISTRATION

8. Pending grant estate to vest in Public Trustee.
9. Upon grant of probate or administration property to vest.
10. Property to vest subject to trusts.
11. Real and personal estate to be assets.
12. Real estate to vest according to will.
13. Executor to have same rights and duties as heretofore as to personal estate.
14. Executor not entitled beneficially unless authorized by will.
15. Court may deal with interest of infants in certain cases.
16. Power to appoint trustees of infant's property.
17. Personal representative may relinquish office.
18. Executor or administrator to represent real estate.
19. All creditors to stand in equal degree.
20. Bond to be executed.
21. Penalty of bond.
22. Sureties to bond may be dispensed with in certain cases.
23. Court may revoke administration or order new or additional bond.
24. If condition of bond broken, bond may be assigned.
25. Court may grant relief if estate being wasted or in danger.
26. In case of renunciation or failure to take probate, right of executor gone.
27. Where infant is executor, etc.
28. Where person entitled to probate or administration is out of the jurisdiction.
29. Administration *pendente lite*.
30. Administration with the will annexed.

31. Probate or administration if executor, etc., absent or neglects to obtain probate, etc.
32. Special letters of administration if executor or administrator not within jurisdiction.
33. On return of executor or administrator, special administration may be revoked.
34. Absent executor liable to account.
35. Court may remove executor.
36. Revocation pending litigation not to abate proceedings.
37. Power to postpone distribution.
38. Devisee or legatee may apply to court in certain cases.
39. Inventory and accounts.
40. If accounts not filed Registrar to give notice, etc.
41. Court may settle all questions arising in administration.
42. Payments made before revocation to be valid.
43. Payments, etc., to be valid notwithstanding defect.
44. Executor deemed to be resident in Fiji.

#### PART VI—RESEALING PROBATES AND ADMINISTRATION

45. Probates, etc., may be sealed.

#### PART VII—CAVEATS

46. Caveat.
47. Court may remove caveat.

#### PART VIII—MISCELLANEOUS

48. Affidavits may be sworn before a justice of the peace under certain circumstances.
49. Deposits not exceeding four hundred dollars in any bank may be paid to widow or next of kin without probate or administration.
50. Records of grants, etc.
51. Payment of balance of estate to Curator or Public Trustee of the country or territory where deceased was domiciled.
52. Rules of court and fees.

### CHAPTER 10

## SUCCESSION, PROBATE AND ADMINISTRATION

*Ordinance No. 20 of 1970, Act No. 24 of 1976*  
**AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO  
 SUCCESSION, PROBATE AND ADMINISTRATION OF ESTATES OF  
 DECEASED PERSONS**

[2nd July, 1970]

#### PART I—PRELIMINARY

##### *Short title*

1. This Act may be cited as the Succession, Probate and Administration Act and shall be construed as one with the Supreme Court Act. (Cap. 13.)

*Interpretation*

2.—(1) In this Act, unless the context otherwise requires—

- “administration” includes letters of administration of the estate and effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes; and also exemplification of letters of administration with or without the will annexed and such other evidence of letters of administration purporting to be under the seal of a court of competent jurisdiction as in the opinion of the court is sufficient;
- “administrator” includes the Public Trustee and any other person to whom administration is granted;
- “court” means the Supreme Court or a judge thereof;
- “intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;
- “personal chattels” means livestock, vehicles and accessories, furniture, furnishings, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, jewellery and other articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include any chattels used at the death of the intestate for business purposes nor money or securities for money;
- “personal estate” means the personal property of a deceased person and extends to leasehold estates and other chattels real, and also to all other property whatsoever which, prior to the commencement of the Real Property Ordinance, 1876, devolved by law upon an executor or administrator, and to any share or interest therein;
- “personal representative” means the executor, original or by representation, of the will, or the administrator of the estate for the time being, of a deceased person;
- “prescribed” means prescribed by this Act or by any rules made under the provisions of this Act;
- “probate” includes “exemplification of probate”, and such other formal evidence of probate purporting to be under the seal of a court of competent jurisdiction, as in the opinion of the court is sufficient;
- “property” includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action and any other right or interest;
- “Public Trustee” means the Public Trustee under the Public Trustee Act;  
(Cap. 64.)
- “real estate” means the real property of a deceased person, and extends to messuages, lands, rent and hereditaments of freehold or any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein;
- “Registrar” means the Chief Registrar of the Supreme Court and includes any Deputy Registrar or District Registrar;
- “trustee corporation” has the same meaning as in the Trustee Act;  
(Cap. 65.)
- “will” extends to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a

disposition by will and testament, and to any other testamentary disposition.

(2) Except where otherwise expressly provided, this Act applies only to the wills and estates of persons dying after the commencement of this Act.

(3) For the purposes of this Act the certificate of the Attorney-General shall be sufficient proof that any country or territory is or was a country or territory of the Commonwealth at the date specified in such certificate.

## PART II—JURISDICTION OF THE COURT

### *Jurisdiction of court*

3.—(1) Subject to the provisions of this Act, and to any rules made hereunder the court shall have jurisdiction in contentious and non-contentious probate matters and proceedings and in the granting or revoking of probate of wills and administration of estates of persons dying leaving property in Fiji.

(2) The jurisdiction vested in the court by the provisions of subsection (1) shall, subject to any modifications effected by any rules made under the provisions of section 52, be in conformity with the law and practice in force in England on the 1st day of January, 1967, or on such later date as the Chief Justice may from time to time appoint by notice in the Gazette, so far as the same can be read as capable of application to local circumstances.

### *Duties of Registrar*

4. The Registrar shall, subject to the rules, perform such duties in reference to proceedings in the probate jurisdiction of the court, and such other duties, as may be prescribed by the rules.

## PART III—DISTRIBUTION ON INTESTACY

### *Distribution of real and personal estate of intestate*

5. Notwithstanding anything to the contrary contained in any laws in force in Fiji at the date of commencement of this Act, the property of an intestate dying on or after the date of commencement of this Act shall be distributed in accordance with the provisions of this Act, and no person shall have any right, title, share, estate or interest in such property except as provided in this Act.

### *Succession to property on intestacy*

6.—(1) Subject to the provisions of Part II, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed, shall hold the property as to which a person dies intestate on or after the date of commencement of this Act on trust to distribute the same as follows:—

(a) if the intestate leaves a wife, or husband, with or without issue, the surviving wife or husband shall take the personal chattels absolutely, and—

(i) if the net value of the residuary estate of the intestate, other than the personal chattels, does not exceed two thousand dollars, the residuary estate absolutely; or

(ii) if the net value of the residuary estate exceeds two thousand dollars, the sum of two thousand dollars absolutely;

- (b) if the intestate leaves no issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a), take one-half of the residuary estate absolutely;
- (c) if the intestate leaves issue, the surviving wife or husband shall, in addition to the interests taken under paragraph (a), take one-third only of the residuary estate absolutely, and the issue shall take per stirpes and not per capita the remaining two-thirds of the residuary estate absolutely;
- (d) if the intestate leaves issue, but no wife or husband, the issue of the intestate shall take per stirpes and not per capita the whole estate of the intestate absolutely;
- (e) if the intestate leaves no issue but both parents, then, subject to the interests of a surviving wife or husband, the father and mother of the intestate shall take the residuary estate of the intestate absolutely in equal shares;
- (f) if the intestate leaves no issue, but one parent only then, subject to the interests of a surviving wife or husband, the surviving father or mother shall take the residuary estate of the intestate absolutely;
- (g) if the intestate leaves no issue or parent, the surviving husband or wife shall take the residuary estate of the intestate absolutely;
- (h) if the intestate leaves no husband or wife and no issue or parents, then the brothers and sisters of the whole blood, and the children of deceased brothers and sisters of the whole blood, of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;
- (i) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or children of deceased brothers or sisters of the whole blood, then the brothers and sisters of the half blood and children of deceased brothers and sisters of the half blood shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;
- (j) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood, or children of deceased brothers or sisters of the whole blood or of the half blood, then the grandparents of the intestate shall take the whole estate of the intestate absolutely, and if more than one survives the intestate they shall take absolutely in equal shares, but if there is no grandparent, then the uncles and aunts of the whole blood, and children of deceased uncles and aunts of the whole blood, of the intestate, being brothers and sisters of the whole blood of children of deceased brothers and sisters of the whole blood, of a parent of the intestate, shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;
- (k) if the intestate leaves no husband or wife and no issue or parents or brothers or sisters of the whole blood or of the half blood or children of deceased brothers or sisters of the whole blood or of the half blood and no grandparents or uncles or aunts of the whole blood or children of deceased uncles or aunts of the whole blood of the intestate being brothers and sisters of the whole blood of children of deceased brothers and sisters of the whole blood, of a parent of the intestate,

- then the uncles and aunts of the half blood and children of deceased uncles and aunts of the half blood of the intestate shall take the whole estate of the intestate absolutely in equal shares, such children taking per stirpes and not per capita;
- (1) in default of any person taking an absolute interest under any of the foregoing provisions of this section the residuary estate of the intestate shall belong to the Crown as bona vacantia, and in lieu of any right to escheat, and the Crown may, out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.
- (2) For the purposes of subsection (1)—
- (a) the net value of the property of a deceased person is the net value of that property at the date of the death of that person as finally assessed by the Commissioner of Estate and Gift Duties for the purpose of the Estate and Gift Duties Act; (Cap. 203.)
- (b) any income derived from the property of a deceased person shall be distributed among the persons entitled in distribution to that property in the same respective proportions to which they are entitled to share in the distribution of that property.
- (3) In this section—
- “child”—
- (a) in relation to an intestate, means any child, whether legitimate or illegitimate, of the intestate;
- (b) in relation to any person entitled under the provisions of this Act to share in the property of an intestate, means any child legitimate or illegitimate of that person;
- “issue” includes a child or any other issue whether legitimate or illegitimate, in any generation, of an intestate.
- (4) For the purposes of this section, an illegitimate relationship between a father and his child shall not be recognised unless there is proof that the paternity of the father has been admitted by or established against the father while both the father and the child were living.

#### PART IV—GRANTS OF LETTERS OF ADMINISTRATION

##### *Persons entitled to grant*

7. The court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being not less than twenty-one years of age—
- (a) the husband or wife of the deceased; or
- (b) if there is no husband or wife, to one or more of the next of kin in order of priority of entitlement under this Act in the distribution of the estate of the deceased; or
- (c) any other person, whether a creditor or not, if there is no person entitled to a grant under paragraphs (a) and (b) resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.

PART V—PROBATE AND ADMINISTRATION

*Pending grant estate to vest in Public Trustee*

8. Pending the grant of probate of a will or administration of the estate of an intestate, the real and personal estate of a deceased person shall, without any charge being leviable therefore, vest in the Public Trustee for the purpose of accepting service of notices and proceedings and acting as nominal defendant.

*Upon grant of probate or administration property to vest*

9. Upon the grant of probate or administration, all property of which a deceased person dies possessed, or entitled to, in Fiji shall, as from the death of such person, pass to and become vested in the executor to whom probate has been granted, or administrator for all the estate and interest of the deceased therein, in the manner following, that is to say—

- (a) on testacy or on partial intestacy, in the executor or administrator with the will annexed; and
- (b) on intestacy, in the administrator.

*Property to vest subject to trusts*

10. All property held by any person in trust shall vest as aforesaid, subject to the trusts and equities affecting the same.

*Real and personal estate to be assets*

11.—(1) The real as well as the personal estate of every deceased person shall be assets in the hands of the executor to whom probate has been granted, or administrator, for the payment of all duties and fees and of the debts of the deceased in the ordinary course of administration.

(2) No executor or administrator shall by virtue of such office have or exercise any right of retainer in priority to the other creditors of the estate in respect of any debt due to him.

(3) An executor to whom probate has been granted, or administrator, may, for the purposes of administration, sell or lease such real estate, or mortgage the same, with or without a power of sale, and assure the same to a purchaser or mortgagee in as full and effectual a manner as the deceased could have done in his lifetime.

*Real estate to vest according to will*

12. Subject as aforesaid, the real estate of every person who dies testate shall be held by the executor to whom probate has been granted or the administrator with the will annexed according to the trusts and dispositions of the will of such deceased person.

*Executor to have same rights and duties as heretofore as to personal estate*

13. The executor to whom probate has been granted, or administrator, shall have the same rights and be subject to the same duties with respect to the real estate of the deceased that executors or administrators respectively heretofore have had or been subject to with reference to personal estate:

Provided that it shall not be lawful for some or one only of several joint executors or administrators to sell or transfer any real estate without an order of the court.



*Executor not entitled beneficially unless authorized by will*

14. No executor, as such, shall be entitled to take beneficially any residue not expressly disposed of by the will of the testator, unless it appears by such will that he is intended so to take.

*Court may deal with interest of infants in certain cases*

15.—(1) Where a person dies either before or after the commencement of this Act leaving infant issue and the value of the share of the real and personal property of the deceased person to which an infant is entitled in distribution does not exceed ten thousand dollars, the court may, on the application of any such infant, or of any person on his behalf, authorize the executor or administrator to expend the whole or any part of the share of such infant in his maintenance, advancement or education.

(2) The power or authority that the court may confer under this section on an executor or administrator is in addition to any other power or authority, statutory or otherwise, that the executor or administrator may have to pay or apply capital money or assets, or the income thereof, to or on behalf of an infant.

*Power to appoint trustees of infant's property*

16.—(1) Subject to the provisions of subsection (5), where an infant is absolutely entitled under the will or on the intestacy of a deceased person who dies before or after the commencement of this Act to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and that devise, legacy, residue or share is not, under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representative of the deceased may appoint a trustee corporation or two or more individuals not exceeding four (whether or not including the personal representative or one or more of them) to be the trustee or trustees of that devise, legacy, residue or share for the infant, and may execute or do any assurance, act or thing requisite for vesting that devise, legacy, residue or share in the trustee or trustees so appointed.

(2) On the vesting of the devise, legacy, residue or share, mentioned in subsection (1) in the trustee or trustees appointed under the provisions of that subsection, the personal representatives as such are discharged from all further liability in respect of that devise, legacy, residue or share.

(3) Trustees appointed under the provisions of subsection (1) may retain any property, transferred to them pursuant to the provisions of this section, in its existing condition or state of investment, or may convert it into money, and upon conversion shall invest the money in any of the securities or property authorized for the investment of trust funds.

(4) Where a personal representative has, before the commencement of this Act, retained or sold any such devise, legacy, residue or share as is mentioned in subsection (1), and has invested it or the proceeds thereof in any investments in which he was authorized to invest money subject to the trust, then, subject to any order of the court made before that date, he shall be deemed not to have incurred any liability on that account or by reason of not having paid or transferred the money or property into court.

(5) The power of appointing trustees conferred upon personal representatives by this section is subject to any direction or restriction contained in the will of the deceased.

*Personal representative may relinquish office*

17.—(1) A personal representative may at any time, by leave of the court, and on such conditions as the court may impose, relinquish his office to such person as the court may appoint.

(2) Notwithstanding any such order, the personal representative shall continue liable for all acts and neglect whilst he was acting as executor or administrator, but not otherwise or further.

*Executor or administrator to represent real estate*

18. In all proceedings concerning the real estate of a deceased person, his personal representative, so long as such estate remains vested in him, shall represent such real estate and the persons interested therein in the same manner and to the same extent as in proceedings concerning personal estate.

*All creditors to stand in equal degree*

19.—(1) In the administration of the estate of every deceased person, all the creditors of such person shall be treated as standing in equal degree, and be paid accordingly out of the assets, whether legal or equitable.

(2) Nothing herein contained shall prejudice or affect any mortgage, lien, charge or security which any person may hold or be entitled to for payment of his debt.

*Bond to be executed*

20.—(1) Subject to the provisions of subsection (2) every person to whom administration is granted shall, previous to the issue of such administration, execute in the form prescribed by the rules, a bond, with one or two sureties conditioned for duly collecting, getting in, administering and distributing the real and personal estate of the deceased.

(2) No such bond shall, unless specifically ordered by the court, be required from the Public Trustee of England, a trustee corporation or from any person obtaining administration to the use or for the benefit of the Crown.

*(Amended by 24 of 1976, s. 16.)*

*Penalty of bond*

21. Every bond shall be in a penalty equal to the gross amount under which the property of the deceased is sworn but the court may dispense with one or both sureties to any bond or reduce the amount of such penalty, or limit the liability of any surety to such amount as the court thinks reasonable; or, in place of any such bond, the court may accept the security of any incorporated company or guarantee society approved of by the court.

*Sureties to bond may be dispensed with in certain cases*

22.—(1) Notwithstanding any other provision of this Act, in any case where a person dies leaving property not exceeding four thousand dollars in value, and administration is granted to the husband or widow of the deceased, no surety or sureties shall be required to the administration bond.

(2) Notwithstanding any other provision of this Act, in any case where the claim of any creditor of the deceased or any portion of such claim is secured by a mortgage of or other charge on real estate of the deceased, no surety or sureties shall be required to the administration bond in an amount exceeding a sum

representing the difference between the amount of the gross value of the property of the deceased and the amount of the claim which such mortgage or charge secures.

*Court may revoke administration or order new or additional bond*

23. The court may, at any time, upon the application of any person interested in the estate or of its own motion on the report of the Registrar—

- (a) revoke the administration already granted; or
- (b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the court may direct; and upon default may remove the administrator and appoint another in his place, with power to sue or be sued upon any contract made by the removed administrator; or
- (c) order that the liability of any surety to any administration bond be reduced to such amount as the court in the circumstances of the case thinks reasonable.

*If condition of bond broken, bond may be assigned*

24. The court may order the Registrar for and on behalf of Her Majesty to assign any bond to some person to be named in such order, and such person, or his personal representative, shall be entitled to sue upon the bond in his own name, and be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the said bond.

*Court may grant relief if estate being wasted or in danger*

25. If, upon the application of a surety to any bond, it appears to the court that the estate is being or is in danger of being wasted, or that the surety is being or is in danger of being in any way prejudiced by the act or default of the person administering the estate, or that any surety desires to be relieved from further liability, the court may grant such relief as it may think fit.

*In case of renunciation or failure to take probate, right of executor gone*

26. Where an executor renounces probate of the will, or dies without having taken probate, or where, being personally cited to take probate, he does not appear to such citation, the right of such executor in respect of the executorship shall wholly cease; and the representation to the testator and the administration of his estate shall go, devolve and be committed in like manner as if such person had not been appointed executor.

*Where infant is executor, etc.*

27.—(1) Where an infant is sole executor, administration with the will annexed may be granted to the guardian of such infant, or to such other person as the court thinks fit, until such infant has attained the age of twenty-one years, with full or limited powers to act in the premises until probate has been granted to the said executor.

(2) The person to whom such administration is granted shall, unless otherwise ordered, have the same powers vested in him as any ordinary administrator with the will annexed.

*Where person entitled to probate or administration is out of the jurisdiction*

28. Where an executor or any person entitled to probate or administration is out of the jurisdiction but has some person within the jurisdiction appointed under power of attorney to act for him, administration may be granted to such attorney, but on behalf of the person entitled thereto, and on such terms and conditions as the court thinks fit:

Provided that nothing in this Act shall prevent the court from granting probate to an executor who is out of the jurisdiction.

*Administration pendente lite*

29.—(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the estate, and every such administrator shall be subject to the immediate control of the court and act under its direction.

(2) The court may, out of the estate of the deceased, assign to an administrator appointed under this section such reasonable remuneration as the court thinks fit.

*Administration with the will annexed*

30. Where a person dies leaving a will but without having appointed an executor, or leaving a will and having appointed an executor who is not willing and competent to take probate, the court may appoint an administrator of the estate of the deceased, or of any part thereof, upon his giving security as aforesaid, and such administration may be limited as the court thinks fit.

*Probate or administration if executor, etc., absent or neglects to obtain probate, etc.*

31. Where an executor neglects to apply for or to renounce probate within six months from the date of the testator or from the time of such executor attaining the age of twenty-one years, or where an executor is unknown or cannot be found, the court may, upon the application of any person interested in the estate, or of any creditor of the testator, grant administration with the will annexed to the applicant, and such administration may be limited as the court thinks fit.

*Special letters of administration if executor or administrator not within jurisdiction*

32.—(1) If, at the expiration of three months from the date of grant of probate or administration of the will or estate of any deceased person, the executor to whom probate has been granted, or the administrator, is residing out of Fiji, the court may, upon the application of any creditor or person interested in the estate, grant to the applicant special letters of administration of the estate of such deceased person, with limited or unlimited powers.

(2) The applicant shall satisfy the court that the executor or administrator is resident out of the jurisdiction, and that the applicant is thereby delayed in recovering or obtaining payment of moneys, or the possession of goods and chattels, or real estate to which he is by law entitled, or that the estate is liable to loss or waste.

*On return of executor or administrator, special administration may be revoked*

33.—(1) On the return within the jurisdiction of the executor to whom

probate has originally been granted, or the administrator, he may apply to the court to rescind such special grant; and the court may make such order upon such terms and conditions as to the court may seem fit, and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant had never been made.

(2) Upon any order being made for the rescission of any special grant, the special administrator shall be bound to account to the original executor or administrator, and to pay over all moneys received by him and then remaining in his hands.

*Absent executor liable to account*

34. Should an executor or administrator neglect to apply for an order for the rescission of any special grant as aforesaid, he shall, until such special grant is rescinded, be liable to make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands, or which might have come to his hands but for his wilful neglect or default, including the neglect herein mentioned.

*Court may remove executor*

35. The court may for any reason which appears to it to be sufficient, either upon the application of any person interested in the estate of any deceased person or of its motion on the report of the Registrar and either before or after a grant of probate has been made—

- (a) make an order removing any executor of the will of such deceased person from office as such executor and revoking any grant of probate already made to him; and
- (b) by the same or any subsequent order appoint an administrator with the will annexed of such estate; and
- (c) make such other orders as it thinks fit for vesting the real and personal property of such estate in the administrator and for enabling the administrator to obtain possession or control thereof; and
- (d) make such further or consequential orders as it may consider necessary in the circumstances.

*Revocation pending litigation not to abate proceedings*

36. Where probate or administration is revoked or rescinded, pending any proceedings commenced by or against any executor or administrator lawfully acting as such, such proceedings shall be continued in the name of the executor or administrator appointed on such revocation or rescission as if the same had been originally commenced by or against such last-mentioned executor or administrator.

*Power to postpone distribution*

37. An executor or administrator shall not be bound to distribute the estate of the deceased before the expiration of one year from the date of grant of probate or administration as the case may be.

*Devisee or legatee may apply to court in certain cases*

38. Subject to the provisions of section 37, if an executor who has obtained probate, or an administrator with the will annexed, after request in writing neglects or refuses to—

- (a) execute a transfer of land devised to a devisee; or
- (b) transfer, pay or deliver to the person entitled any bequest, legacy or residuary bequest.

such devisee or person may apply for an order upon such executor or administrator to comply with such request, and the court may make such order as it thinks fit.

*Inventory and accounts*

39.—(1) Every person to whom probate or administration is granted may and shall if so required by the Registrar file an inventory of the estate of the deceased, and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by the rules or as the court may order.

(2) The order of the court allowing any account shall be prima facie evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, except so far as it is shown by some person interested therein that a wilful or fraudulent error, omission or entry has been made in such account.

*If accounts not filed Registrar to give notice, etc.*

40.—(1) If an executor or administrator neglects to file an inventory or to pass accounts within one month after being required by the Registrar so to do, the Registrar may apply for an order upon such executor or administrator to file such inventory or exhibit such account forthwith.

(2) No proceedings under this section shall affect the liability of the executor or administrator to be proceeded against for an account and administration, or prevent the court from ordering the assignment of any bond to any person with a view to enforcing the penalty thereof as hereinbefore mentioned.

*Court may settle all questions arising in administration*

41.—(1) The court may make such order with reference to any question arising in respect of any will or administration, or with reference to the distribution or application of any real or personal estate which an executor or administrator may have in hand, or as to the residue of the estate, as the circumstances of the case may require.

(2) Such order shall bind all persons whether sui juris or not.

(3) No final order for distribution shall be made except upon notice to all the parties interested, or as the court may direct.

*Payments made before revocation to be valid*

42.—(1) Where any probate or administration is revoked or rescinded, all payments bona fide made to the executor or administrator before the revocation or rescission shall be a legal discharge to the person making the same.

(2) An executor or administrator who has acted under any revoked or rescinded probate or administration may retain and reimburse himself, or shall be entitled to be reimbursed, in respect of all payments bona fide made by him before revocation or rescission, in the same manner as if such revocation or rescission had not taken place.

*Payments, etc., to be valid notwithstanding defect*

43. All persons making or permitting to be made any payment or transfer bona fide upon any probate or administration granted under the authority of this

Act shall be indemnified and protected in so doing, notwithstanding any defect or circumstances whatsoever affecting the validity of such probate or administration not then known to such person.

*Executor deemed to be resident in Fiji*

44.—(1) Every executor or administrator appointed under this Act, or named in any probate or letters of administration granted by any court of competent jurisdiction in any country or territory of the Commonwealth and making application under this Act for the resealing of such probate or administration, shall be deemed to be resident in Fiji.

(2) Where not actually so resident he shall, before the issue or sealing of any probate or administration, file with the Registrar an address within the city of Suva at which notices and processes may be served upon him, and all services at such registered address shall be deemed personal service.

PART VI—RESEALING PROBATES AND ADMINISTRATION

*Probates, etc., may be sealed*

45.—(1) When any probate or administration heretofore or hereafter granted by any court of competent jurisdiction, in any country or territory of the Commonwealth, is produced to and a copy thereof deposited with the Registrar by any person being the executor or administrator, whether original or by representation or by any person duly authorized by power of attorney in that behalf, under the hand and seal of such executor or administrator, such probate or administration may be sealed with the seal of the court.

(2) When so sealed, such probate or administration shall have the like force, effect and operation in Fiji and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if such probate or administration had been originally granted by the court.

(3) The court may require any such administrator or attorney of an administrator, to give security for the due administration of the estate in respect of matters or claims in Fiji.

PART VII—CAVEATS

*Caveat*

46.—(1) Any person may lodge with the Registrar a caveat against any application for probate or administration, or for the sealing of any probate or letters of administration under the provisions of this Act, at any time previous to such probate or administration being granted or sealed.

(2) Every such caveat shall set forth the name of the person lodging the same, and an address within the city of Suva at which notices may be served on him.

*Court may remove caveat*

47.—(1) In every case in which a caveat is lodged, the court may, upon application by the person applying for probate or administration, or for the sealing of any probate or letters of administration, as the case may be, remove the same.

(2) Every such application shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat.

(3) Such application may be heard and order made upon affidavit or oral evidence, or as the court may direct.

### PART VIII—MISCELLANEOUS

*Affidavits may be sworn before a justice of the peace under certain circumstances*

48. Any affidavit required by this Act to be sworn before a Commissioner for Oaths may be sworn before a justice of the peace where the deponent resides more than ten miles from the place of business of the nearest Commissioner for Oaths.

*Deposits not exceeding \$400 in any bank may be paid to widow or next of kin without probate or administration*

49.—(1) On the death of any person leaving a sum of money not exceeding four hundred dollars standing to his credit in any bank, if no probate or administration is produced to such bank within four months of the death of such person, and no notice in writing of any will, or of an intention to apply for administration, is given to the bank within the said period, the bank may, after fourteen days notice in writing to the Public Trustee, pay such sum of money to any person who appears to the satisfaction of the manager of the bank to be the person who would be beneficially entitled to such sum of money as if a grant of probate or administration had been obtained, and payment of such sum of money accordingly shall be a valid discharge to the bank against the claims of any other person whomsoever.

(2) Within one month thereafter, every bank shall furnish to the Commissioner of Estate and Gift Duties, in the prescribed form, a return of every sum of money paid over by the bank, under the provisions of subsection (1), without the production of probate or administration.

*Records of grants, etc.*

50.—(1) The Registrar shall cause entries to be made in a book to be kept for that purpose of—

- (a) all grants of probate and administration, and all orders to collect;
- (b) the filing, passing and allowance of the accounts of all executors and administrators; and
- (c) any special order extending the time for passing such accounts.

(2) Such book shall set forth—

- (a) the dates of such grants;
- (b) the names of the testators or intestates;
- (c) the place and time of death;
- (d) the names and description of the executors or administrators;
- (e) the sworn value of the estates;
- (f) the dates of the filing, passing, allowance of, and special orders with reference to the said accounts.

(3) Where a grant of probate or administration is made or resealed by the court, a copy of that grant may, on payment of the prescribed fee, be obtained from the court, with or without the annexure thereto of a copy of the will, if any, to which it relates, and such copy may be issued under seal for all purposes as an office copy, and when so sealed and issued shall be sufficient evidence of that grant and of the death and date of death of the deceased without further proof.



*Payment of balance of estate to Curator or Public Trustee of the country or territory where deceased was domiciled*

51.—(1) Where the Public Trustee is administering the estate of any person who at the time of his death was domiciled in any country or territory of the Commonwealth, and whose estate is being administered by the Curator or Public Trustee of the place in which the deceased was domiciled, the balance of the estate, after payment of local creditors, commission fees and expenses, may be paid over to such last-named Curator or Public Trustee.

(2) Where any part of the estate of a deceased person, whose estate is being administered by the Public Trustee is situated outside Fiji, the Public Trustee may receive any part of such estate so situated, and, when received, the same shall be dealt with according to the law of Fiji.

*Rules of Court and fees*

52.—(1) The Chief Justice may make and prescribe all such rules, forms and fees as may be necessary or convenient to carry out the objects and purposes of this Act and in particular, but without prejudice to the generality of the foregoing, prescribe what part of the business, and of the jurisdiction exercisable by a Judge in Chambers, may be transacted or exercised by the Registrar or other officer of the court.

(2) Subject to the provisions of this Act and to such rules as are made from time to time pursuant to subsection, (1), all the rules and forms prescribed thereunder in force in the Principal Probate Registry in England as at the date referred to in section 3, so far as the same can be read as applicable to local circumstances, shall apply as if made pursuant to subsection (1).

(3) Subject to such fees as are prescribed from time to time pursuant to subsection (1), the scale of fees in probate and administration matters in force in Fiji immediately prior to the commencement of this Act shall continue to apply.

*Controlled by Ministry of the Attorney-General*

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O N A P P E A L  
FROM THE COURT OF APPEAL OF FIJI

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B E T W E E N :

FIJI RESORTS LIMITED

APPELLANT  
(Original Defendant)

- a n d -

THE COMMISSIONER OF ESTATE  
AND GIFT DUTIES

RESPONDENT  
(Original Plaintiff)

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SUPPLEMENTAL CASE FOR THE RESPONDENT

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Messrs Charles Russell  
& Company  
Hale Court  
Lincolns Inn  
LONDON WC2A 3UL

Solicitors for the Respondent

Messrs Coward Chance  
& Company  
Royex House  
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LONDON EC2V 7LD

Solicitors for the Appellant