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A LAW to provide for the transfer of probate jurisdiction from the Dean and the Ecclesiastical Court to the Royal Court (Probate Division), for regulating the practice and procedure of the said division and for various matters incidental thereto, sanctioned by Order of His Majesty in Council of the

28th day of JANUARY, 1949.

(Registered on the 19th day of February, 1949).

STATES OF JERSEY.

The 6th day of October, 1948.

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

ARTICLE 1

**ABOLITION OF THE PROBATE JURISDICTION OF THE DEAN
AND OF THE ECCLESIASTICAL COURT**

The jurisdiction and authority of the Dean and of the Ecclesiastical Court to grant or revoke probate of wills or letters of administration of the effects of deceased persons shall in respect of such matters absolutely cease; and no jurisdiction or authority in relation to any testamentary causes or matters, or to any matters arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by the Dean or by the Ecclesiastical Court.

ARTICLE 2

PROBATE JURISDICTION OF THE ROYAL COURT

(1) Subject to the provisions of this Law, the Royal Court shall, in relation to probates and letters of administration, have the following jurisdiction (in this Law referred to as “probate jurisdiction”) that is to say –

- (a) all such jurisdiction and authority in relation to the granting or revoking of probate and administration of the effects of deceased persons as was immediately before the commencement of this Law vested in or exercisable by the Dean or by the Ecclesiastical Court, together with full authority to hear and determine all questions relating to testamentary cases and matters;
- (b) all such powers in relation to the personal estate of deceased persons as the Dean or the Ecclesiastical Court had immediately before the commencement of this Law in relation to those testamentary causes and matters and those effects of deceased persons which were at that date within the jurisdiction of the Dean or of the Ecclesiastical Court;

and the Royal Court shall, in the exercise of the probate jurisdiction, perform all such like duties with respect to the estates of deceased persons as were, immediately before the commencement of this Law, to be performed by the Dean or by the Ecclesiastical Court in respect of probates, administrations and testamentary causes and matters which were at that date within the jurisdiction of the Dean or of the Ecclesiastical Court:

Provided that the Royal Court shall have jurisdiction –

- (a) to make a grant of probate or administration in respect of a deceased person notwithstanding that the deceased person left no estate; and

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- (b) to make a grant of administration of the effects of a deceased person who has died leaving direct heirs him surviving.

(2) The probate jurisdiction shall be exercised in a division of the Royal Court to be called the Probate Division.

(3) In the authentication of probates, letters of administration, orders and other instruments, and copies thereof, the Judicial Greffier may describe himself as Registrar.

ARTICLE 3

THE BAILIFF, JURATS AND OFFICERS OF THE COURT

(1) Subject to the provisions of this Law and to rules of court, the Bailiff, Jurats, His Majesty's Attorney-General, Viscount and Solicitor-General, and the Judicial Greffier, shall perform duties in the court analogous to those performed by them respectively in the "Samedi" division of the Royal Court immediately before the commencement of this Law.

- (2) If the office of –
 - (a) Bailiff;
 - (b) His Majesty's Attorney-General;
 - (c) His Majesty's Viscount;
 - (d) His Majesty's Solicitor-General; or
 - (e) Judicial Greffier;

be vacant, or if the holder of any such office be prevented by absence from the Island, illness, or other lawful cause, from performing the duties of his office, then the duties under this Law of the holder of such office shall be performed by the person who is for the time being discharging the duties of such office.

ARTICLE 4

SEAL OF THE COURT

(1) The Superior Number of the Royal Court shall cause a seal to be made for the court and may cause the same to be from time to time broken, altered and renewed at its discretion.

(2) All probates, letters of administration, orders and other instruments, and copies thereof, respectively, purporting to be sealed with the seal of the court shall be received in evidence without further proof thereof.

ARTICLE 5

POWER OF THE COURT AS TO WITNESSES AND DOCUMENTS

- (1) In the exercise of its jurisdiction, the court –
- (a) may order to appear before the court any party or person whom it may think fit to examine and may examine upon oath or affirmation, as the case may require, parties and witnesses, and may, either before or after or with or without such examination, receive their or any of their affidavits or affirmations, as the case may be;
 - (b) may order to be produced before the court or otherwise all such deeds, evidences or writings, as it may think proper; and
 - (c) may order any person to produce and bring into court, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it is not shown that any such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has the knowledge of any such paper or

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writing, the court may direct such person to attend for the purpose of being examined respecting the same; and such person shall be bound to answer such questions, and, if so ordered, to produce and bring in such paper or writing.

(2) Any person disobeying any such order as is mentioned in sub-paragraph (a) or (b) or (c) of paragraph (1) of this Article shall be considered to be in contempt of court and shall be liable to be dealt with accordingly.

ARTICLE 6

PRACTICE OF THE COURT

(1) Subject as provided by paragraph (2) of this Article, the jurisdiction vested by this Law in the court shall, so far as regards procedure and practice, be exercised in the manner provided by this Law or by rules of court, and, where no special provision is contained in this Law or in rules of court with reference thereto, any such jurisdiction shall be exercised as nearly as may be in the same manner as the same might have been exercised by the Dean or by the Ecclesiastical Court or by the division of the Royal Court to which it formerly appertained.

(2) In all proceedings under this Law, the “Défaut Vicomte Partie” is abolished.

ARTICLE 7

APPLICATION FOR GRANTS

(1) An application for the grant of probate or administration shall be made to the Judicial Greffier.

(2) Such application may be made through an Advocate or Solicitor of the Royal Court or in person by executors and persons claiming to be entitled to grants of probate or administration.

(3) Grants of probate or administration shall be made by the Judicial Greffier in the name of the Royal Court (Probate Division) and

under the seal of the court, and any such grant shall have effect over the personal estate of the deceased.

(4) The Judicial Greffier shall not allow probate or letters of administration to issue until all the enquiries which he may see fit to institute have been answered to his satisfaction:

Provided that the Judicial Greffier shall afford as great facilities for the obtaining of grants of probate or administration as are consistent with a due regard to the prevention of error or fraud.

(5) No grant shall be made by the Judicial Greffier in any case in which there is contention, until the contention is disposed of, or in any case in which it appears to him that a grant ought not to be made without the direction of the court.

(6) In any case where it appears doubtful to the Judicial Greffier whether an application for a grant of probate or administration should or should not be granted, or where any question arises in relation to a grant, or an application for a grant, the Judicial Greffier shall present a statement of the matter in question to the Bailiff for the directions of the court, and the court may direct the Judicial Greffier to proceed with the matter in accordance with such instructions as the court may think necessary, or may forbid any further proceedings by the Judicial Greffier in relation to the matter, leaving the person applying for the grant to apply "ex parte" to the court.

(7) Upon any such "ex parte" application, the court may order such persons to be convened, such evidence to be taken and such enquiries to be made as the court may deem necessary and, subject to the provisions of this Law and to rules of court, may make any such order as the circumstances may require.

ARTICLE 8

PRESUMPTION OF DEATH

(1) An applicant for a grant of probate or administration shall furnish to the Judicial Greffier evidence of the death of the person in respect of whose personal estate the application is made.

(2) In any case in which the applicant is unable to furnish such evidence as aforesaid, the Judicial Greffier shall present a statement of the matter to the Bailiff for the directions of the court.

(3) The court shall order the applicant to be convened, shall examine the evidence produced by him, and shall order such other persons to be convened, such additional evidence to be heard and such enquiries to be made, as the court may deem necessary.

(4) The court, if satisfied that the death of the person in respect of whose personal estate the application has been made may be presumed beyond all reasonable doubt to have occurred on or after a certain date, may make a declaration accordingly, and, subject to the provisions of this Law and to rules of court, may make such orders as the circumstances may require.

(5) Where a declaration of presumption of death has been made by the court under this Article, such declaration shall, in any proceedings, be received as evidence of the death, and be deemed to be proof of the death unless cause to the contrary is shewn.

(6) For the avoidance of doubt, it is hereby declared that neither the court nor the Judicial Greffier shall be bound to accept as conclusive an Act of the “Chefs Plaids d’Héritage” recording a declaration of presumption of death made by a “Prévot”.

ARTICLE 9

OATHS AND AFFIRMATIONS

(1) The Judicial Greffier shall, for the purposes of this Law, have full power to administer oaths.

(2) Any person required to take an oath before the Judicial Greffier shall be permitted to make his solemn affirmation instead of being sworn.

(3) Any person who shall willfully swear or affirm falsely before the Judicial Greffier shall be liable to the penalties and consequences of willful and corrupt perjury.

ARTICLE 10

OATH OF EXECUTOR OR ADMINISTRATOR

Every executor or administrator shall, before the issue of a grant, make or subscribe an oath or affirmation in such form or forms as may be prescribed or, until such form or forms are prescribed as aforesaid, in the same manner as, immediately before the commencement of this Law, an executor or administrator was required to make or subscribe an oath or affirmation before the Dean.

ARTICLE 11

CAVEATS

(1) Any person intending to oppose the issue of a grant of probate or administration may, either personally or by an Advocate or Solicitor of the Royal Court, lodge a caveat with the Judicial Greffier.

(2) A caveat shall bear the date of the day on which it is lodged, and, subject to the provisions of paragraph (6) of this Article, shall remain in force for the space of six months only and shall then expire and be of no effect:

Provided that caveats may be renewed from time to time.

(3) After a caveat has been lodged, the Judicial Greffier shall not proceed with the grant of probate or administration to which it relates until the caveat has expired or been withdrawn or the contentious proceedings consequent on the caveat have terminated.

(4) Any person whose application for a grant of probate or administration has been stopped by a caveat may obtain from the Bailiff an Order of Justice calling upon the caveator to appear before the court to show cause why his caveat should not be cleared off.

(5) If the caveator fails to appear, the court may order the caveat to be cleared off, and may make such other order as the circumstances of the case may require.

(6) If the caveator appears in answer to the Order of Justice, the caveat shall remain in force until the matter in dispute between the parties has been determined by judgment or order of the court.

(7) If the caveator appears in answer to the Order of Justice and contests the validity of a testamentary instrument of a deceased person in relation to whose personal estate the caveat was lodged, the court shall proceed to determine the question of the validity or invalidity, in whole or in part, of the testamentary instrument in the same manner “mutatis mutandis” as if the court were hearing an action for the setting aside (“cassation et annulation”) of a will of personal estate.

(8) If the instrument or part of it is found to be valid, the court shall pronounce for the validity thereof and shall authorise the Judicial Greffier to grant probate to such person or persons as are found by the court to be entitled to the grant.

(9) If the instrument is found to be invalid, the court shall pronounce against the validity thereof and shall authorise the Judicial Greffier to grant probate of a valid testamentary instrument, or, if as a result of the proceedings there is an intestacy, to grant administration to such person or persons, in either case, as are found by the court to be entitled to the grant.

(10) If the caveator appears in answer to the Order of Justice and contests the right of the person who has applied for a grant of probate or administration to obtain such grant, alleging a prior right in himself or in some other person, the court shall proceed to determine who is entitled to the grant and shall authorise the Judicial Greffier to grant probate or administration to such person or persons as are found by the court to be entitled to the grant.

(11) If the caveator appears in answer to the Order of Justice and contends that the sureties to the bond proposed to be given by the applicant for the grant are not possessed of sufficient real and personal estate to warrant their standing surety to the bond, the court may require the sureties to justify that they in fact offer sufficient guarantee, to that end may require the sureties to make or subscribe an oath or affirmation as to their means, and may make such order as the circumstances may require.

(12) If the caveator appears in answer to the Order of Justice and raises to the issue of a grant of probate or administration any objection other than one of those specified in the foregoing paragraphs of this Article, the court shall proceed to hear such objection and may make such order as the circumstances may require.

(13) A caveat may be withdrawn by the caveator at any time before the service upon him of the Order of Justice.

(14) Any order made by the court under this Article may include an order for the payment of damages.

ARTICLE 12

POWER TO GRANT PROBATE OR ADMINISTRATION TO A TRUST CORPORATION

- (1) The court may –
 - (a) where a trust corporation is named in a will as executor, whether alone or jointly with another person, grant probate

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to the corporation either solely or jointly with another person as the case may require;

- (b) grant probate to a trust corporation as executor dative either solely or jointly with another person; and
- (c) grant administration to a trust corporation either solely or jointly with another person;

and the corporation may act accordingly as executor or administrator, as the case maybe.

(2) Probate or administration shall not be granted to a nominee on behalf of a trust corporation.

(3) Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, give security or do any other act or thing which the court or the Judicial Greffier, as the case may be, may require with a view to the grant to the corporation of probate or administration, and the acts of an officer so authorised shall be binding on the corporation.

(4) This Article shall have effect whether the testator or the intestate died before or after the commencement of this Law.

(5) For the purposes of this Law, the expression “trust corporation” means –

- (a) an association incorporated by Act of the States of Jersey confirmed by Order of His Majesty in Council;
- (b) a company registered under the law governing for the time being the registration in Jersey of companies with limited liability;

being an association or company which –

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- (i) is empowered by its constitution to undertake the business of acting as executor and administrator; and
- (ii) is, by virtue of an Act of the court for the time being in force, authorised to apply for grants of probate and administration.

(6) Where any association or company which is neither incorporated nor registered in the Island is named in a will as executor, whether alone or jointly with another person, nothing in this Article shall restrict the power of the court or of the Judicial Greffier, as the case may be, to grant probate to the attorney of such association or company specially appointed by it as such.

ARTICLE 13

GRANT TO EXECUTOR DATIVE

Probate shall be granted to an executor dative in every case where there is no executor nominate willing and competent to take probate and in every case where it was customary for the Dean to commit the execution of a will to a person other than an executor nominate, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor nominate.

ARTICLE 14

POWER AS TO APPOINTMENT OF EXECUTOR DATIVE OR ADMINISTRATOR

(1) Where a person has died or dies wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor is at the time of the death of such person resident out of the Bailiwick, and it appears to the court to be necessary or convenient in any such case, by reason of any special circumstance, to appoint some person to be the executor dative of the will or to be the administrator of the personal estate of the deceased, or of any part of such

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personal estate, other than the person who, if this Law had not been passed, would have been entitled to a grant of probate or administration, it shall not be obligatory upon the court to make a grant to the person who, if this Law had not been passed, would have been entitled to the grant, but it shall be lawful for the court, in its discretion, to appoint such person as the court thinks fit to be such executor dative or such administrator, upon his giving such security (if any) as the court shall direct; and every such grant may be limited as the court thinks fit.

(2) As from the commencement of this Law, the power of the “Samedi” division of the Royal Court to place the estate of a deceased person in the possession of the Viscount shall be abolished.

ARTICLE 15

VISCOUNT IN POSSESSION “PENDENTE LITE”

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 place the estate in the possession of the Viscount, who shall act under the direction of the court.

ARTICLE 16

PAYMENTS UNDER REVOKED PROBATES OR ADMINISTRATIONS

(1) Where any probate or administration is revoked under this Law, all payments made in good faith to any executor or administrator under such probate or administration, before its revocation, shall be a legal discharge to the person making the same.

(2) The executor or administrator who has acted under any such probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration is afterwards granted might have lawfully made.

ARTICLE 17

**PERSONS MAKING PAYMENTS OR TRANSFERS UPON
PROBATES OR ADMINISTRATIONS**

All persons and corporations making or permitting to be made in good faith any payment or transfer upon any probate or administration granted in respect of the personal estate of any deceased person under the authority of this Law, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or administration.

ARTICLE 18

BONDS

(1) Every executor dative to whom a grant of probate, and every person to whom a grant of administration, is made shall give a bond to the Judicial Greffier and, subject to the provisions of this Article, if the Judicial Greffier so requires, with one or more sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased.

(2) Such bond shall be in a penalty of double the amount of the personal estate of the deceased as ascertained in such manner as may be prescribed, unless the court or the Judicial Greffier, as the case may be, in any case thinks fit to direct the same to be reduced, in which case it shall be lawful for the court or the Judicial Greffier to do so; and the court or the Judicial Greffier may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the court or the Judicial Greffier thinks reasonable.

(3) The Judicial Greffier for the time being shall have power to enforce any bond given under this Article or to assign it in accordance with the provisions of this Article to some other person.

(4) The bond shall be in such form as may be prescribed.

(5) Where it appears to the satisfaction of the court that the condition of a bond has been broken, the court may, on an application in that behalf, order that the bond shall be assigned to such person as may be specified in the order, and the person to whom the bond is assigned in pursuance of the order shall be entitled to sue thereon in his own name, as if it had been originally given to him instead of to the Judicial Greffier, and to recover thereon as trustee for all persons interested the full amount recoverable in respect of the breach of the condition thereof.

(6) Nothing in this Article shall require –

- (a) His Majesty’s Viscount; or
- (b) any person authorised to apply for and obtaining a grant for the use and benefit of His Majesty;

to give a bond.

(7) Rules of court may be made for providing that sureties to bonds shall not be required when the grant is made to –

- (a) the principal heir of the deceased or his guardian; or
- (b) a trust corporation;

or in any other proper case.

ARTICLE 19

GUARANTEE CORPORATIONS

(1) For the purposes of this Law, the expression “guarantee corporation” means a company or corporation for the time being approved by the court.

(2) The court shall not approve as a guarantee corporation any company or corporation unless –

- (a) it is duly authorised by its constitution to become surety to a bond given by an executor or by an administrator;
- (b) it has filed with the Judicial Greffier an affidavit by its proper officer to the effect that it is empowered by its constitution to give such a bond, that the bond is executed in the manner prescribed by its constitution, and as to the sufficiency of the assets of the company or corporation:

Provided that the court may, in its discretion, accept the aforesaid affidavit if made annually, in lieu of requiring it in each particular case, upon the company or corporation undertaking in the event of any alteration in its constitution within the annual period affecting the giving of such bonds to file an affidavit forthwith detailing such alteration; and

- (c) if incorporated elsewhere than in the Island, it has entered into an undertaking with the Judicial Greffier to the effect that –
 - (i) every bond entered into by the company or corporation under the provisions of this Law shall be deemed to be based upon a contract made in the Island under the law for the time being in force therein, and that any question or dispute arising out of such bond shall be within the jurisdiction of the Royal Court:

Provided that nothing in this sub-paragraph contained shall prevent the reference to arbitration of any such question or dispute; and

- (ii) so long as the company or the corporation, as the case may be, is and remains a guarantee corporation for the purposes of this Law, it shall duly appoint one or more persons residing permanently in the Island to be its attorney or its joint and several attorneys, with full power and authority to accept service of all and every

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form of legal process for and on behalf of the company or the corporation in all actions, suits and affairs instituted or to be instituted in all Courts of Law in the Island and before all Judges, Commissioners and Arbitrators in the Island.

(3) The court or the Judicial Greffier, as the case may be, may accept a guarantee corporation as surety to a bond given by an executor dative or by an administrator and in such case, subject to compliance with the provisions of this Law and with rules of court, no other surety shall be required.

(4) Every bond shall be sealed with the seal of the company or corporation.

ARTICLE 20

DEPOSIT OF WILLS AND INSPECTION OF COPIES

All original wills and other documents which are under the control of the court shall be deposited and preserved in such places as the court may direct, and any wills or other documents so deposited, shall, subject to the control of the court and to rules of court, be open to inspection.

ARTICLE 21

OFFICIAL COPIES

An official copy of the whole or any part of a will, or an official certificate of any grant of administration, may be obtained from the Judicial Greffier on payment of such fees as may be prescribed by regulations made under the provisions of Article 29 of this Law.

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ARTICLE 22

NECESSITY FOR PRODUCTION OF A GRANT

Save as otherwise provided by any enactment, the production of a grant by the court of probate or administration shall be necessary to establish the right to recover or receive any part of the personal estate and effects, situated in the Island, of any deceased person.

ARTICLE 23

PENALTY OF INTERMEDDLING

If any person takes possession of and in any way administers any part of the personal estate and effects of a deceased person without obtaining a grant of probate or administration, he shall be liable, on conviction before the Royal Court, to a fine not exceeding one thousand pounds sterling or to imprisonment for a term not exceeding twelve months:

Provided that no person shall render himself liable to such fine or to such imprisonment by reason only of the fact that he has made arrangements for disposing of the body of the deceased in any manner authorised by law or custom or for placing in safe custody or otherwise preserving the personal estate and effects of the deceased.

ARTICLE 24

DUTY OF EXECUTOR OR ADMINISTRATOR AS TO INVENTORY

The court may, on the application of any person interested in the personal estate of a deceased person, order the executor or administrator, as the case may be, to exhibit on oath in court a true and perfect inventory and account of the personal estate of the deceased.

ARTICLE 25

**PROCEEDINGS TO COMPEL ACCEPTANCE OR REFUSAL OF
A GRANT**

(1) If the person having the right to apply for a grant of probate or administration refuses or neglects to do so, the court, at the instance of another having an interest in the personal estate of the deceased, may call upon such person to take the grant and, on his failing or refusing to do so, may make such order as the circumstances of the case may require.

(2) In any such proceedings, the court may order any person, having in his possession the will of the deceased, to produce the said will in court.

ARTICLE 26

SECOND AND SUBSEQUENT GRANTS

(1) If any person to whom a grant of probate or administration has been made, either solely or jointly with another person or persons, has died leaving a part of the personal estate of a deceased person unadministered, the court or the Judicial Greffier, as the case may be, may appoint some other person or persons to act in the stead of the person who has so died.

(2) The provisions of this Law shall, subject to rules of court, apply “mutatis mutandis” to second and subsequent grants as they apply to original grants.

(3) In the case of second and subsequent grants, the penalty of the bond shall be limited to double the amount of the unadministered portion of the personal estate of the deceased to be placed in the possession of, or dealt with by, the person to whom such second or subsequent grant is made, either solely or jointly with the surviving executor or administrator.

(4) The court or the Judicial Greffier, as the case may be, may require any person or persons applying for a second or subsequent grant to make and subscribe such oaths or affirmations as may be necessary for determining the amount proper to be fixed as the penalty of the bond.

ARTICLE 27

DELIVERY OF DOCUMENTS TO THE COURT

The Dean and the Greffier of the Ecclesiastical Court shall, upon the request of the Superior Number of the Royal Court, deliver to the court all documents relating exclusively or principally to testamentary causes or matters which may be in their possession or control, and any documents so delivered shall be deposited and arranged under the control of the court.

ARTICLE 28

PROBATES AND ADMINISTRATIONS GRANTED BEFORE THE COMMENCEMENT OF THIS LAW

Legal grants of probate and administration made before the commencement of this Law shall have the same force and effect as if they had been granted under this Law, all inventories and accounts in respect thereof may be enforced by the court and all bonds taken in respect thereof may be enforced by or under the authority of the court at its discretion.

ARTICLE 29

POWER TO FIX FEES

- (1) The States may make regulations –
 - (a) fixing the fees and percentages to be taken in the court, or in any office which is connected with the court, or in which any business connected with the court is conducted, or by any officer paid wholly or partly out of public funds who is attached to the court; and

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- (b) determining the manner of the collection of the said fees and percentages.

(2) Without prejudice to the generality of the foregoing provisions of this Article, regulations thereunder may require any person applying for a grant of probate or administration to make or subscribe such oaths or affirmations as may be prescribed for determining the amount of the fees or percentages payable in respect of the grant and may prescribe penalties for failure to comply with any such requirement.

(3) Regulations made by the States under this Article may be amended by subsequent regulations and shall remain in force until repealed.

ARTICLE 30

SAVING OF POWERS OF STATES AS REGARDS FEES

Nothing in this Law shall affect the power to fix fees conferred upon the States by –

- (a) “La Loi (1930) constituant le Département du Vicomte”;⁴
- (b) “La Loi (1930) constituant le Département des Officiers de la Couronne”;⁴
- (c) “La Loi (1931) constituant le Département du Greffe Judiciaire”;⁴
- (d) “La Loi (1936) touchant la Rétribution de la charge de Bailli”;⁴

or by any Law, whether passed before or after the commencement of this Law, amending the said Laws.

⁴ Repealed by Departments of the Judiciary and the Legislature (Jersey) Law, 1965 (Volume 1963–1965, page 558).

ARTICLE 31

RULES OF COURT

Without prejudice to the power to make rules conferred upon the Royal Court by any Law whether passed before or after the commencement of this Law, rules of court may be made by the Superior Number of the Royal Court, with the advice and assistance of the Rules Committee –

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the court in all causes and matters in or with respect to which the court has for the time being jurisdiction (including the procedure and practice to be followed in the Departments of His Majesty's Viscount and of the Judicial Greffier) and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing) the manner in which, and the time within which, any application which, under this Law or any enactment, is to be made to the court, shall be made;
- (b) for regulating the sittings of the court, whether sitting in court or in chambers;
- (c) for prescribing what part of the non-contentious business of the court may be transacted in chambers, either before the Bailiff alone, or before the Bailiff and Jurats, or before the Judicial Greffier, and, in respect of the business to be transacted before the Bailiff and Jurats in chambers, for prescribing the number of Jurats whose presence shall be requisite;
- (d) for regulating any matters relating to costs of proceedings in the court;
- (e) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be

given, in any proceedings or on any application in connexion with, or at any stage of any proceedings;

- (f) for taxing costs in any cause or matter in the court or in any proceedings preliminary or incidental to any such cause or matter;
- (g) for regulating the optional use of the English language in all causes and matters whatsoever in the court and in any proceedings preliminary or incidental to any such cause or matter;
- (h) for repealing any enactments which relate to matters with respect to which rules are made under this Article;
- (j) for regulating or making provision with respect to any other matters which may require to be regulated or with respect to which provision may require to be made under this Law.

(2) Rules of court made under this Article shall apply to all proceedings by or against the Crown.

(3) Rules of court made under this Article may be amended or revoked by subsequent rules and shall be laid before the States as soon as may be after they are made and if the States, within the period of twenty-one days beginning with the day on which any such rules are laid before them, resolve that they be annulled, they shall cease to have effect, but without prejudice to anything previously done thereunder or to the making of any new rules.

(4) For the purpose of advising and assisting the Superior Number of the Royal Court in the making of rules, there shall be a Committee (in this Article referred to as “the Rules Committee”) composed of two Advocates appointed by the Jersey Bar and of two Solicitors (“Ecrivains”) appointed by the “Chambre des Ecrivains”.

(5) The term of office of any person who is a member of the Rules Committee shall be such as may be specified in his appointment.

(6) For the avoidance of doubt, it is hereby declared that His Majesty's Attorney-General, Viscount and Solicitor-General, and the Judicial Greffier, shall be entitled to attend every sitting of the Superior Number of the Royal Court at which it is proposed to make or consider the making of rules of court under this Article.

ARTICLE 32

INTERPRETATION OF TERMS

In this Law, unless the context otherwise requires, the following expressions shall have the meanings hereby assigned to them respectively, that is to say –

“administration” includes all letters of administration of the effects of a deceased person;

“the court” means the Probate Division of the Royal Court;

“executor dative” means an executor other than an executor nominate;

“executor nominate” means an executor named in the will of a deceased person and includes the attorney of the executor specially appointed by him as such, and the guardian of the executor;

“grant” means a grant of probate or administration;

“guarantee corporation” has the meaning assigned to it by Article 19 of this Law;

“prescribed” means prescribed by rules of court;

“probate jurisdiction” has the meaning assigned to it by Article 2 of this Law;

“Rules Committee” has the meaning assigned to it by Article 31 of this Law;

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“rules of court” includes forms;

“testamentary cause or matter” includes all causes or matters relating to the grant or revocation of probate or administration, to the revocation (“cassation et annulation”) of a will and to the reduction of a will “ad legitimum modum”;

“trust corporation” has the meaning assigned to it by Article 12 of this Law;

“will” means a will of personal estate (whether or not any real estate is devised by the will) and includes any testamentary instrument of which probate may be granted.

ARTICLE 33

SAVING OF RIGHTS OF PRINCIPAL HEIR

For the avoidance of doubt, it is hereby declared that, save as otherwise expressly provided by this Law, nothing in this Law shall be construed as derogating from the rule of law expressed in the maxim “le mort saisit le vif sans ministère de Justice”.

ARTICLE 34

CONSEQUENTIAL AMENDMENTS

The “Règlement sur les Testaments d’Immeubles”, passed by the States on the twenty-fourth day of June, 1851, and confirmed by Order of Her Majesty in Council of the seventh day of August, 1851,⁵ shall be amended as follows –

- (a) in the second paragraph of Article 14 thereof, for the words “Greffier de la Cour Ecclésiastique” there shall be substituted the words “Greffier Judiciaire”; and

⁵ Tomes I–III, pages 191 and 195.

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(b) the last paragraph of Article 29 thereof shall be deleted.

ARTICLE 35

COMMENCEMENT

This Law shall come into force on such day or days as the States may by Act appoint and different days may be fixed for different purposes and different provisions of this Law.⁶

ARTICLE 36

SHORT TITLE

This Law may be cited as the Probate (Jersey) Law, 1949.

⁶ Articles 3, 4(1), 12(5), 19, 29 to 32, 35 and 36 came into force on 24th February, 1949 (R & O 2316) and the remainder of the Law came into force on 25th May, 1949 (R & O 2393).