

CHAPTER 84

PREVENTION OF FRAUDS

Ordinances Nos- 7 of 1840, 16 of 1852, 11 of 1896. 60 of 1947-

AN ORDINANCE TO PROVIDE MORE EFFECTUALLY FOR THE PREVENTION OF FRAUDS AND PERJURIES.

[1st February. 1840.]

Short title.

1. This Ordinance may be cited as the Prevention of Frauds Ordinance.

to time, by Order to be published in the Gazette, appoint; and it shall be lawful for the Minister, by Order, to declare that subsection (1) shall cease to have operation in any place, district, or province which may become subject thereto, in which case subsection (1) shall accordingly cease to have any operation in such place, district, or province.

Deeds affecting immovable property to be executed before a notary and witnesses.

2. No sale, purchase, transfer, assignment, or mortgage of land or other immovable property, and no promise, bargain, contract, or agreement for effecting any such object, or for establishing any security, interest, or incumbrance affecting land or other immovable property (other than a lease at will, or for any period not exceeding one month), nor any contract or agreement for the future sale or purchase of any land or other immovable property, and no notice, given under the provisions of the Thesawalamai Pre-emption Ordinance, of an intention or proposal to sell any undivided share or interest in land held in joint or common ownership, shall be of force or avail in law unless the same shall be in writing and signed by the party making the same, or by some person lawfully authorized by him or her in the presence of a licensed notary public and two or more witnesses present at the same time, and unless the execution of such writing, deed, or instrument be duly attested by such notary and witnesses.

4. No will, testament, or codicil containing any devise of land or other immovable property, or any bequest of movable property, or for any other purpose whatsoever, shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of a licensed notary public and two or more witnesses, who shall be present at the same time and duly attest such execution, or if no notary shall be present, then such signature shall be made or acknowledged by the testator in presence of five or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time.

Certain contracts or agreements for the cultivation of paddy fields and chenas for any period not exceeding twelve months need not be notarially executed.

3. (1) The provisions of section 2 shall not be taken to apply to any contract or agreement for the cultivation of paddy fields or chena lands for any period not exceeding twelve months, if the consideration for such contract or agreement shall be that the cultivator shall give to the owner of such fields or lands any share or shares of the crop or produce thereof.

Operation.

(2) Subsection (1) shall come into operation in such places, districts, or provinces, and at such time or times, respectively, as the Minister shall from time

5. No appointment made by will, testament, or codicil in exercise of any power shall be valid unless the same be executed in manner hereinbefore required; and every will, testament, or codicil executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will, testament, or codicil, notwithstanding that it shall have

Appointments by will to be executed like other wills, and to be valid although other required solemnities are not observed.

been expressly required that a will, testament, or codicil, made in exercise of such power, should be executed with some additional or other form of execution or solemnity.

thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

6. No will, testament, or codicil, or any part thereof, shall be revoked otherwise than by the marriage of the testator or testatrix, or by another will, testament, or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will, testament, or codicil is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or testatrix, or by some person in his or her presence, and by his or her direction, with the intention of revoking the same.

9. Every will, testament, or codicil executed in manner hereinbefore required shall be valid without any other publication thereof:

Publication not to be requisite.

Provided always that every such will, testament, or codicil shall, after the decease of the testator or testatrix, be duly proved and recorded in the District Court empowered by law to grant probate or administration in such case, according to such general rules of practice as may now or hereafter be made by the Judges of the Supreme Court.

No alteration in a will shall have any effect unless executed as a will.

7. No obliteration, interlineation, or other alteration made in any will, testament, or codicil after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will, testament, or codicil before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will, but the will, testament, or codicil, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator or testatrix, and the subscription of the witnesses be made in the margin or some other part of the will, testament, or codicil opposite or near to such alteration, or at the foot or end of or opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to *wch* alteration, and written at the end or some other part of the will, testament, or codicil,

10; If any person who shall attest the execution of any will, testament, or codicil shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will, testament, or codicil shall not on that account be invalid.

Will not to be void on account of incompetency of attesting witness.

11. If any person shall attest the execution of any will, testament, or codicil to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, disposition, or appointment of or affecting any immovable or movable property (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift, disposition, or appointment shall, so far only as concerns such person attesting the execution of such will, testament, or codicil, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as witness to prove the execution, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, disposition, or appointment mentioned in such will, testament, or codicil.

Gifts to an attesting witness to be void.

No will revoked to be revived otherwise than by re-execution, or a codicil to revive it.

8. No will, testament, or codicil, or any part thereof, which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will, testament, or codicil which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much

12. In case by any will, testament, or codicil any immovable or movable property shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged, shall

Creditor attesting to be admitted a witness.

attest the execution of such will, testament, or codicil, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, testament, or codicil, or to prove the validity or invalidity thereof.

Executor to be admitted a witness.

13. No person shall, on account of his or her being an executor or executrix of a will, testament, or codicil, be incompetent to be admitted a witness to prove the execution of such will, testament, or codicil, or a witness to prove the validity or invalidity thereof; nor shall any executor or executrix, by reason of his or her attesting such will, forfeit the recompense or commission for his or her trouble payable by law, custom, or practice.

Soldiers' and mariners' wills excepted.

14. Notwithstanding anything in this Ordinance contained, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Ordinance.

Deeds executed before other than proper notary prior to passing of Ordinance.

15. No writing, deed or instrument for the purposes aforesaid, and no will, testament, or codicil which shall have been made prior to the passing of this Ordinance, shall be deemed or taken to be invalid by reason alone of the same not having been executed and acknowledged before or attested by a notary licensed to practise within the district wherein the land or property devised or to be affected by such writing, deed or instrument, will, testament, or codicil, is situated, any provision in Ordinance No. 7 of 1834* to the contrary notwithstanding:

Provided always that every such writing, deed, or instrument, will, testament, or codicil shall have been at the time of the date thereof duly executed, acknowledged before, or attested by a notary licensed to practise in some other district,

Deeds to be executed in duplicate.

16. Every deed or other instrument, except any will, testament, or codicil required by this Ordinance to be executed or acknowledged before or to be attested by a notary, shall be executed, acknowledged, or attested in duplicate.

17. None of the foregoing provisions in this Ordinance shall be taken as applying to any grants, sales, or other conveyances of land or other immovable property from or to Government, or to any mortgage of land or other immovable property made to Government, or to any deed or instrument touching land or other immovable property to which Government shall be a party, or to any certificates of sales granted by Fiscals of land or other immovable property sold under writs of execution.

Ordinance not to affect sales by Government, &c.

18. No promise, contract, bargain, or agreement, unless it be in writing and signed by the party making the same, or by some person thereto lawfully authorized by him or her, shall be of force or avail in law for any of the following purposes :—

No promise, &c., to be in force unless in writing and signed.

- (a) for charging any person with the debt, default, or miscarriage of another,
- (b) for pledging movable property, unless the same shall have been actually delivered to the person to whom it is alleged to have been pledged;
- (c) for establishing a partnership where the capital exceeds one thousand rupees:

Provided that this shall not be construed to prevent third parties from suing ""partners, or persons acting as such, and offering in evidence circumstances to prove a partnership existing between such persons, or to exclude parol testimony concerning transactions by or the settlement of any account between partners.

19. Provided always that nothing in section 18 shall be construed to exempt any deed or instrument in any manner affecting land or other immovable property from being required for that purpose to be executed and attested in manner declared by section 2 of this Ordinance.

Instruments falling under section 18 to be notarially attested if affecting land.

* Repealed by Ordinance No. 7 of 1840.