PROBATE PRACTICE

The hopes or fears which may have been raised by the sweeping title of this paper must be quickly dispelled. It is not intended to offer any comprehensive summary thereof but rather to draw attention to one or two particular areas. Divided as it must be Probate Practice is divided broadly into two areas viz that which relates to the estate of the Testator and that which relates to the Intestate estate.

Probate is really the judicial proceedings by which it is determined whether or not a paper purporting to be the last Will and Testament of a deceased person is his legally valid last Will. What appears to be a valid Will may not be so: it may have been forged, not executed in the way required by the law, signed by the testator while mentally incompetent or under duress or subsequently revoked by him. If the document is held to be genuine and valid it is admitted to probate; otherwise its admission is refused. Until it has been so admitted, it cannot be used for any legal purposes; in particular the person nominated as executor cannot function, and the Court must appoint an administrator of the estate.

The idea that the genuineness and validity of a Will should be investigated and determined in special proceedings was developed in England by the Ecclesiastic Courts which in the Middle Ages had acquired jurisdiction over succession to personal property. No such idea had been worked out by the secular Courts which had jurisdiction over the descent of real property. In America, secular Courts were set up to deal with probate matters and in the 19th century their jurisdiction was extended to cover the problem of the validity of a Will with respect to real property.

The same step was taken in England in 1987 after jurisdiction had been transferred in 1857 from the ecclesiastical to the secular Courts. In England probate jurisdiction ordinarily rests with the Probate, Divorce and Admiralty Division of the High Court.

The English pattern is also that of the other common law parts of the Commonwealth and basically also that of the United States. Under the pattern prevailing in most States in the United States, the document purporting to be a Will is admitted to probate in a Special Court. Proceedings require little proof but occasionally allow the adjudication of a limited range of objections. Any interested party, however, may have the probate revoked if he prevail in a Will contest; this must be raised usually in a Court higher than the Probate Court.

Here in Jamaica an uncontested application for Probate is dealt with by the Registrar in Chambers.

All adult persons of a sound mind are capable of making a valid Will. A general duty lies on any person setting up a Will to satisfy the Court that it is the Will of a competent testator. If a Will rational on the face of it is shown to have been executed and attested in the manner prescribed by Law, it is presumed, in the absence of any evidence to the contrary to have been made by a person of competent understanding in other words capacity will be presumed until the contrary is shown.

A Will should normally be in writing. It should name an executor/Trustee whose duties would be to administer the estate of the testator after his death (A Will is of course ambulatory and does not take effect until the death of the testator); the testator should sign the Will

usually at the bottom or end thereof and his signature should be witnessed by at least 2 persons who saw him so sign. Every person may dispose by Will of all real estate and all personal estate which he may be entitled to either at law or in equity at the time of his death and whether if not so disposed of would devolve on his heir at Law or his executor and would pass as if on an intestacy. There are certain other formal requirements of a valid Will. By the English rules of private international law a Will of immovable property must be made in accordance with the formalities required by the Law of the place where the property is situated and in the case of movables:-

(a) the place where he makes his Will or

(b) the place of his domicile when the will is made, or

(c) the place of his domicile or origin

A Will may be revoked by:-

(a) the execution of another Will and a later Will and with an expressed revocation clause

(b) subsequent Marriage of the testator

(c) destruction by or as ordered by the Testator

As a general rule, an executor cannot assert or reply on his rights as executor in any Court without first having proved the Will so appointing him and producing a copy thereof certified under the seal of the Court. In other words probate is necessary to establish the Will and the position of the executor. The probate copy constitutes the recognized legal evidence of the Will and the executor's title. When the Will is proved "the Court has the legal optics through which to look at it."

An executor, when appointed by a Will derives his title from the Will and the property of his testator vests in him immediately on the death of

the testator. Moreover probate when granted relates back to the time of the testator's death. It was Lord Denham C.J. who in Whitehead vs. Taylor (1839) 10A and E 210, 212 said "The Law knows no interval between the testator's death and the vesting of the right in his representative. As soon as he obtains probate, his right is considered as accruing from that period. It is interesting however to note that if a sole executor die after executing a conveyance, assignment or assent or indeed doing any executorial act before obtaining probate the act is valid but letters of administration with the Will annexed must be produced, instead of probate, as evidence of the executor's title. In Williams on Executors 14th edition page 59 we read "Though an executor as such cannot maintain actions before probate, he may commence an action and continue it until such time as the production of the probate becomes necessary, but he must be ready to produce it then". It is quite clear then that an executor derives his title and authority from the Will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death and the consequence is that he can institute an action in the character of the executor before he proves the Will. He cannot it is true obtain a decree before probate but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of Court, he is allowed to prove his title.

On the other hand an executor who has decided to administer his testator's estate can, before probate, be sued by creditors of the deceased or by beneficiaries under the Will.

A testator may appoint any number of persons to be executors of his Will, but the Court will not grant probate to more than four persons

in respect of the same property. The application of this principle was considered ex parte in the Estate of Holland (1936) 158 LT 417. In this case the testator had appointed four persons to be executors and trustees of his will and fifth person to be his literary executor in respect to certain papers. The 4 executors applied for probate save and except the papers of which the fifth person had been appointed executor. The Registrar refused to make the grant to them and this decision was up held on the ground that the Judicature Act precludes the granting of probate to more than four executors in respect of the whole estate of a testator.

If a testator appoint more than one executor, probate may be granted to some or any one of them without any evidence that the other or others do not wish to act and power will be reserved to the other executor or executors to apply for a like grant. On an application for probate being made by an executor to whom power has been reserved, a grant will be made called "double probate" running concurrently with the original grant. Note however that this double probate must be obtained from the same place where the original grant was obtained.

The business of the Court in respect to grant of Probate and raising Letters of Administration can be divided into another two parts - Contentious and non Contentious. Non contentious business as the name implies is the business of obtaining Probate or Letters of Administration where there is no contention as to the right thereto; where there are no caveats and is generally what is known as "Common Form business". Any other such proceedings relative to the grant of Probate or Letters of Administration would be regarded as contentious business.

As has already been stated all applications for Probate or Letters of Administration are made to the Registrar in Chambers who is required to make all the enquiries as she may see fit to institute and to be answered to her satisfaction.

In the case of a Will or Codicil presented for Probate

(1) An Affidavit shall be required from at least one of the subscribing witnesses to prove that the provisions required by Law in reference to the execution of the Will or Codicil were in fact complied with;

(2) Every Executor shall give Bond to the Queen, Her Heirs and Successors such bond to be in a penalty of the amount of the value of the real estate of the deceased in addition to double the gross annual value of the real estate of the deceased to be verified by affidavit of declaration.

(3) Every Executor shall take Oath that he will duly administer the estate of the deceased person according to Law.

(4) An Inventory of the assets of the deceased if not filed with the other documents an Executor is under oath to have this filed within six months of the grant of the Probate.

If both the subscribing witnesses are dead or if from other circumstances no affidavit can be obtained from wither of them resort must be had to other persons (if any) who may have been present at the execution of the Will or Codicil; but if no affidavit of any such other evidence can be procured an affidavit must be filed of that fact and of the handwriting of the deceased and of the subscribing witnesses and also of any circumstances which may raise a presumption in favour of the due execution of the Will.

Interlineations and alterations, erasures, obliterations are

invalid unless they existed in the Will at the time of its execution, or if made afterwards unless they have been executed and attested in the mode required by the Law. Where interlineations or alterations erasures and obliterations appear in the Will (unless they are duly executed or duly accounted for by the attestation clause) an affidavit in proof of them having existed in the Will before its execution must ve filed except they have been evidenced by the initials of the attesting witnesses.

No Probate shall issue until after the lapse of seven days from the death of deceased unless under special circumstances; on the other hand any application for Probate after a period of three years an affidavit starting the reasons for delay should accompany the application.

If a testator has made two independent Wills one disposing of property in this country and the other disposing of property abroad the former only need be proved in this Country. Where the Wills are not, however, independent, but are interdependent both must be incorporated in the probate.

When Wills should be proved

A Will cannot of course be proved during the lifetime of the testator and as a rule and as just stated probate may not issue until after the lapse of seven days from the testator's death. In his oath the executor must specify the date and place of his testator's death. If the fact of the death is certain but the date is unknown the oath should state the date the testator was last seen and the date his dead body was found.

Cases occur in which the executor is not albe to swear from direct evidence that the testator is dead or that he died on a particular day or at a particular place but in these cases there may be circumstantial or indirect evidence of his death. The testator must in such cases lay his evidence before the Court by motion or otherwise and if the Court is satisfied

that death can reasonably be presumed in the estate it will give permission to the esecutor to swear that the testator died on or after a certain date. When such permission has been obtained the particulars in the Executor's Oath should state that fact.

A Will may be proved in two ways in common form or in solemn form. As was said in Williams on Executors 14th edition page 75 "A Will is proved in common form where when the executor presents it for probate and in the absence of and without citing the parties interested, produces witnesses to prove the same, who testifying by their Oaths, that the testament exhibited is true, it is the whole and last Will and Testament of the deceased, the seal of probate is annexed thereto".

What actually occurs in practice is that the Will supported by the necessary affidavits is presented to the Registrar and if it be perfect on the face of it probate without more is granted.

When an original Will has been lost or destroyed after a testator's death or has been destroyed in his lifetime by some person other than and without the consent of the testator or even by the testator himself without the intention to revoke it probate may be granted of a copy or of a draft or of the contents as established by parol evidence. But such probate may be limited until the Will, or a more authentic copy of the Will, is produced; or, with the consent of the persons interested on intestacy or otherwise prejudiced, a general grant may be made.

A Will is said to be proved in solemn form when as the result of an action brought in Court it is pronounced to be a valid testamentary instrument. Such an action can be brought by the executor, or some other person interested under the Will on his own initiative or as a result of steps taken by some person opposed to the Will. In the alternative, a person

opposed to the Will can bring an action to have the Will pronounced against. The action if brought on the executor's initiative is commenced by the issue of a writ of summons propounding the Will and naming as defendants all persons having interest and opposed to the Will for example persons interested under another Will or Codicil or persons interested in the deceased's intestacy.

The executor may for better security consider it advisable in certain circumstances, example where the validity of the Will has been called in question or is likely to be challenged to apply immediately for probate in solemn form. A Will once proved in a solemn form is a res judicata and cannot afterwards, in the absence of fraud or the discovery of a later Will or some procedural irregularity be impugned by persons who were parties or privy to the action in which it was established. An executor would therefore be well advised wherever there is likelihood of the validity of a Will being afterwards contested to prove it in solemn form in the first instance.

Even after the proof of a Will in common form the executor can be compelled by a person having an interest to prove it in solemn form. There does not appear to be any specific time within which this right to compel the executor must be exercised but if the party exercising it chooses to let a long period elapse before doing so, he is not entitled to any indulgence at the hands of the Court.

The interests of certain persons entitle them to put the executot to proof of the Will whether or not it has already been proved in common form for example:-

(a) the spouse of the deceased and the persons entitled to a share of the deceased's estate on intestacy

(b) a legatee or devisee named in the Will in certain cases; however a legatee who has received his legacy can only be allowed to dispute the Will on making a payment into Court of the amount received to abide the event; and

(c) an executor or a legatee or a devisee who is named in any other testamentary instrument of the deceased and whose interest is adversely affected by the Will.

The Persons opposed to a Will may institute an action to establish their right to represent the deceased and claiming that the Will is invalid. Before a person can be permitted to contest a Will the person propounding it has a right to call on him to show that he has some interest. Any interest however slight is sufficient. A Creditor however has interest only in the fact as to whether or not the estate has sufficient assets to pay his debts.

Apart from the case of Settled Land only the executor named in the Will can prove it.

As in Real Property so in Probate anyone who wishes to assert an interest in the estate of a deceased person may lodge a caveat or notice in writing in the Supreme Court Registry that nothing is to be done in reference to the estate of the deceased named therein unknown to the party who has filed the Notice. A caveat when entered remains in force for six months. It may, of course, be renewed. When a caveat has been entered no grant can issue until it has been removed. The person whose application for a grant is so stopped may, if the caveat has not in the meantime been withdrawn, issue a warning in the appropriate form to the person who has entered the caveat calling on him to enter an appearance within ten days and set out his interest. If no appearance is issued by or on behalf of the caveator the grant will issue. If however an appearance has been entered no grant can issue without an order.

LIMITED PROBATE

The Court may grant a limited probate where the Testator has limited the Executor. So probate in respect of the real estate of a deceased person or any part thereof may be granted either separately or together with the probate of his personal estate. Again a testator may make two Wills, one limited to specific property and the other extending to the residue of his property. If however a testator has appointed an executor without any limitation, the Court can only pronounce for the Will or for an absolute intestacy.

A testator may appoint , and in default of such express appointment he is denied to have appointed, as his special executors in regard to settled land, the persons if any who are at his death the trustees of the settlement thereof and probate may be granted to such trustees specially limited to the

settled land. The espression "Trustees of the settlement", (so often called in Wills today) includes, in the absence of other trustees, the personal representatives of a deceased testator or intestate by whose Will or on whose intestacy the settlement was created. Only persons who are Trustees of the settlement at the testator's death and remain Trustees at the date of the grant are entitled to special probate with respect to the settled land. If there are no such Trustees at the testator's death, a grant of Administration with the Will annexed may be made to persons subsequently appointed to be Trustees.

The Court cannot even by consent order any passage in a Will to be expunged if a testator who was of sound mind intended it to form part of his Will. In Williams on Executors it was said "It appears to us that so to alter a Will as, under the guise of omission, to affect the sense of words deliberately chosen by the testator or his draftsman is equivalent to making a new Will for the testator and on principle we do not consider that this is permissible".

JOINT AND MUTUAL WILLS

A joint Will is a single instrument executed by two (or more) testators in which each expresses his or her testamentary wishes.

The term 'mutual will' is commonly used to denote one of two testamentary instruments made respectively by two persons whereby each gives the other corresponding rights in his property.

A 'joint and mutual' will is a combination of two mutual wills in a single instrument executed by both testators.

A joint will disposing only of property jointly owned by the testators is not normally proved until the death of the survivor of them, unless for some reason it is necessary to obtain a grant in the estate of the first to die.

In ordinary cases a joint will is proved in its entirety as the will of the first to die. It remains as the will of the survivor, and, unless superseded by a later will, should be proved again on his death.

A separate codicil made by one of the testators is proved with the joint will on the death of that testator only.

When a joint will is lodged for proof on the first occasion the Attorney should supply the date of birth of the other testator (or the date of death if he is already dead)

The grant in the estate of the second testator must be extracted from the registry at which the will was proved on the first occasion. The applicant should 'mark' an office copy of the will, or, if he attends at the registry to swear the Oath, he may mark the original will.

If a joint will require evidence of due execution on being proved on the first occasion, the affidavit should, where practicable, establish that the will was duly executed by both testators-for example in Re O'Connor's estate (1942) 1 A.E.R. 546 -

Two sisters made wills in similar terms, each giving all her estate to her two sisters absolutely, and directed 'that my executors shall not prove this will until after the death of my two sisters'. On the death of the first of the sisters her will was admitted to proof, excluding from the probate the words of this direction.

Joint wills, mutual wills and joint and mutual wills are all revocable, but such wills may also constitute a contract or agreement between the testators, and a revocation by one of them may not be fully effective unless done during the lifetime of both of them, with notice to the other, so that he may have the

opportunity of altering his own dispositions.

If after the death of one testator, the survivor revokes his will, the revocation is recognised in the probate registry as operative, but his personal representative may be directed to hold the estate on trust to carry out the terms of the contract, or implied contract (if any), originally made. It does not necessarily follow, because joint or mutual wills are made, that there was a contract: and this is a question to be decided in the Chancery Division, the probate registry being concerned only with the formal validity of the dispositions.

In summary for an uncontested grant of Probate the following documents must accompany the application:-

1. The original Will

   This must be identified by at last one of the attesting witnesses and the Executor(s).

2. Two copies of the Will

3. Affidavit of Plight and Condition

   If the Will has any obliterations, interlineations, alterations, even a staple mark an Affidavit of Plight and Condition.

4. Affidavit of Delay

   If the application is made three years or over from the date of death of the Testator.

5. Affidavit of Knowledge and Acceptance

   If on the face of the Will there could be some doubt as to the due execution and understanding of the contents of the Will example signature by a mark or if it appear 'shaky'.

6. Affidavit of Value

7. Affidavit in Proof of Death

8. Inventory and Kalamazoo copy

9. Declaration of Counting of Inventory

10. Will Bond

11. Probate and Kalamazoo copy

12. Declaration of Counting of Probate and Will

13. Oath of Executor

14. Affidavit of Attesting Witness

Where the attesting witnesses are dead insane or cannot be found evidence of their handwriting would be accepted to show that they attested the Will.

After these documents are executed they should be appropriately stamped at the office of the Stamp Commissioner and then filed in the Probate Registry.

LIMITED GRANTS AND SECOND AND SUBSEQUENT GRANTS

LIMITED GRANTS

Grants of representation may, when necessary, be limited in respect of time, or property or any special purpose.

Some of the more common limited grants are set out below.

(1) GRANT OF PROBATE/ADMINISTRATION AS CONTAINED IN A COPY OR DRAFT OF WILL

Sometimes it is necessary to apply for probate or letters of administration with will annexed where the original will is not available. There is no problem where, for instance, the original is in the custody of a foreign court. In that case a duly authenticated copy may be admitted to proof. No order for admission to proof of the copy will be necessary and the grant will not be limited.

Where, however, the original is lost or destroyed either during the testator's lifetime (without being revoked) or since his death an application may be made to the Registrar or the Master on summons or to the Court on motion (depending on the jurisdiction) for leave to admit to probate the will as contained in a copy, a completed draft, a reconstruction or other evidence. If, however, there is opposition from persons entitled under an intestacy or an earlier will or their consent is not forthcoming then proof in solemn form will be required. This will involve filing an action in Court.

An order granting leave to admit a copy will to probate will usually direct that the grant be made until the original or a more authentic copy be proved. A copy of the order is filed with the Oath.

If the will is lost or missing and was last in the possession of the

testator, the presumption of destruction "animo revocandi" will have to be rebutted (and the procedure in such a case may have to be by proof in solemn form) See Sugden V. Lord St St. Leonard (1876) 1 P.D. 154

The following documents or such of them as are appropriate are lodged with an application on summons or motion:

(1) Affidavit in support

(2) Affidavit showing the existence of the will at the testator's death, the circumstances in which it was lost and what efforts have been made to find it; or if it were not found at the testator's death affidavit of surrounding circumstances.

(3) Affidavit showing due execution of the will - usually from an attesting witness.

(4) Affidavit showing that the original will was compared with the copy found to be correct. If proof is being sought of a draft will, affidavit evidence that the will was prepared from the draft and the draft was subsequently compared with and completed from the original.

(5) Consent of the persons prejudice who are 'sui juris; that is, persons who would take a greater share under an intestacy than under the and will/who are adults. The Court may also require the consent of persons who would take a greater interest under an earlier will. There have been situations where the court has proceeded without the consent of all persons interested in the estate: In the Goods of Apted (1899) P. 272 qualifying in the Goods of Pearson (1896) P. 289.

(6) If no copy or draft will is available an affidavit deponing to the contents of the will as contained in a reconstruction in the form of a

separate document exhibited to the affidavit.

(7) Where the will was last in possession of the testator and cannot be found after his death there should be affidavit(s) reciting the facts relied on to rebut the presumption of destruction "animo revocandi".

Where ther are suspicious circumstances, or lack of consent by persons prejudiced or serious opposition to the will it will be necessary for the will to be propounded in a probate action.

After an order has been made for proof of the will as contained in a copy, draft or reconstruction thereof an application will be made for a grant. The practice is similar to that for a regular grant. The Oath will set out details of the order. The order and other supporting documents will be lodged.

(2) GRANTS TO ATTORNEYS

If a person entitled to a grant resides outside the jurisdiction a grant may be made to his attorney. The grant usually limited for the use and benefit of the principal and until such time as he himself shall apply for and obtain a grant.

While the grant is in effect, the attorney has full power to administer the estate. The grant will be revoked if and when the principal applies for and obtains a grant.

After the power of attorney is executed by the principal it is recorded and must be filed along with the application for the grant. The Oath and supporting documents, as in a regular grant but with the appropriate modifications, are filed. Where the person giving the power of attorney is an executor his attorney will make an application for letters of administration with the will annexed. Where he is entitled to administration the

application by his attorney will be for letters of administration.

An executor cannot take a joint grant with the attorney of another executor, because the executor is entitled to a grant of probate whereas an attorney of an executor will take a grant of administration with the will annexed.

Rule 30 (1) of the United Kingdom Non-Contentious Probate Rules, 1954 states that where the person entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any, unless such notice is dispensed with by the registrar.

(3) GRANT OF ADMINISTRATION PENDENTE LITE

This is a grant made pending the outcome of a probate action. It is made after the commencement of action.

A probate action is one touching the validity of a will or the revocation of a grant. The purpose of the grant is to preserve or protest the estate.

The person appointed is usually someone not connected to the suit. The court must be satisfied as to his fitness. The applicant is usually one of the parties to the action or a person interested, for example, a creditor. Someone connected to the suit may be appointed if all interested parties consent or if the court think that such consents are not necessary: Re Griffin (1925) P. 38

The administrator pendents lite is an officer of the court and subject to its constant direction. He has all the rights and powers of a general administrator except that he cannot distribute the estate (except with the consent of all parties likely to be prejudiced). The grant ceases when the

proceedings come to an end and the person who is then entitled may apply at that time.

The application for appointment of an administrator pendente lite is made by summons naming the proposed administrator and supported by an affidavit giving full particulars of the deceased's property and the reasons for the application, for example that there is rent to be collected and mortgage interest to be paid. It must be served on all parties to the action. The name, address and qualification of the nominated administrator should be given. His consent to act should be filed and an affidavit as to his fitness executed by a disinterested person setting out his suitability to manage the assets and deposing as to his integrity.

After an order is made the administrator pendente lite will then apply for a grant. Documents filed in support of a regular grant will be filed with the appropriate modifications. These will include an Oath which will refer to the Order. A copy of the order will also be filed. Upon obtaining a grant the administrator will be able to act until the action is disposed of.

Statutes in Commonwealth Caribbean territories relevant to grant of administration pendente lite include section 19 Administration of Estates Act (Belize), section 19 (5) Succession Act (Barbados), section 14 Administration of Estate Act (Bermuda) and section 17 Wills and Probate Act No. 2 (Trinidad and Tobago).

See Re Morales, Barclays Bank v. Morales, 5 W.I.N. 238 for an example of a grant of administration pendente lite.

(3) GRANT OF ADMINISTRATION AD LITEM

This is a grant to enable someone to represent the estate as defendant

in an action where the person entitled to a grant, if any, will not take out a grant. The administrator ad litem has no power over the assets of the estate.

If, for instance, a person by driving negligently injures another person or causes death of another person and then dies and no grant is taken out in his estate, then the injured person or the estate of the person killed by the negligent driving (the intending plaintiff) may have no one to sue although an Insurance Company is obliged to indemnify the estate of the driver in respect of the claim or damages. In such a case, the intending plaintiff could apply to the court for his nominee to be appointed administrator limited to defending the action. The administrator ad litem will be sued and when judgement is obtained it is presented to the Insurance Company to indemnify the insured.

See In the Estate of Simpson and In the Estate of Gunning (1936) P. 40 and In the goods of Knight (1939) 3 All E.R. 928.

(5) GRANT "AD COLLIGENDA BONA"

This is a grant of administration where the assets of the estate consist of perishables or need urgent attention and nobody applies for a grant of representation. The purpose of the grant is to enable some suitable person to protest and preserve the assets until a general grant is made.

The grant empowers the administrator to get in the assets and to do such acts as are necessary to preserve them. It is a grant of administration only. If there is a will it is not proved or annexed to the grant. The grant does not give the administrator power to invest money or sell assets. If such powers are needed they should be applied for and included

in the grant.

An application for a grant is made ex parte by summons supported by afficavit. It is made the general powers of the court. Where a general grant is applied for and obtained the grant ad colligenda bona ceases.

SECOND AND SUBSEQUENT GRANTS

(1) GRANT DE BONIS NON ADMINISTRATIS

A grant of administration de bonis non administratis (usually called a grant de bonis non) is made where the person to whom a grant of representation had been made has died leaving part of the estate of the deceased unadministered and there is no representative by the chain of representation, the administrator is given power to complete the administration of the estate. (The chain of representation applies when the executor named from one estate dies before completing the administration of that estate it had become the established practice even before legislation that an executor of a sole or last surviving executor of a testator is the executor of that testator. This delegation of the appointment is exceptionally allowed by the law in this case on the ground of the unlikelehood that the delegate will abuse the special confidence reposed in him by the appointment of an unworthy successor. But this provision does not apply to an executor who does not prove the will of his testator, and, in the case of an executor who leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it ceases to apply on such probate being granted. So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator).

(1) a prior grant of probate or letters of administration was made in respect of the estate;

(2) there is no personal representative either in his own right or by the chain of representation;

(3) part of the estate is unadministered.

The order of priority which applies to original grants whether of administration with will annexed or simple administration also applies to an application for administration de bonis non, and so a grant will only be made to persons who would be entitled to apply had no previous grant been made.

The practice and procedure for obtaining a grant de bonis non is similar to that for obtaining a general grant. The contents of the Oath will vary to fit the particular case. The Oath will contain particulars of the previous grant, the date of the death of the original grantee will be given, persons having a prior right to a grant must be cleared off showing how the chain of representation is broken. If the previous grant was probate or administration with will annexed and the office copy of the will must be marked and identified in the Oath, as the original will would have been already processed by the court. Particulars of the unadministered estate will have to be given in the application.

Provisions in Commonwealth Caribbean territories relevant to administration de bonis non include section 21 (4) of the Administration of Estates Act (Belize) and Form 9 Schedule (Administration de bonis non) General Rules and Orders of the Supreme Court, Part III, Probate and Administration, Non-Contentious Business (Jamaica).

(2) CESSATE GRANT

This is a grant made after a grant limited as to time or the happening of some event comes to an end because the time has expired or the event accomplished. For example, where a grant is made to the guardian of an infant/minor who is a sole executor for the use and benefit of such infant/minor during his minority and the infant/minor subsequently attains his majority the limited grant will cease and the executor will now apply for a cessate grant of probate which is actually a general grant. Another example is where a grant is made to an attorney for the use and benefit of his principal. If the attorney dies a cessate grant may be made to another attorney or to the principal himself.

A cessate grant differs from a grant de bonis non in that in principle a cessate grant is a re-grant of the whole of the deceased's estate whereas a grant de bonis non is a grant of the unadministered part of the estate. However both grants have the same practical effect.

The procedure is similar to that for a general grant but the Oath will recite the previous grant, an office copy of the will is marked, and the estate sworn to is the estate remaining unadministered.

(3) DOUBLE PROBATE

Where a testator appoints more than one executor any one (or more) of them may obtain probate of the will (even without notice to the others). This frequently happens when one is out of the jurisdiction. However, power will be reserved for the other executor(s) who have not renounced to apply later for a grant of probate.

When the person to whom power is reserved obtains a grant this is

known as a grant of 'double probate'. The earlier grant is not called in. Both grants run concurrently and confer the same rights on their respective grantees.

The procedure for applying for a grant of double probate is similar to that for a first grant but the contents of the Oath will be changed to show, for example, the estate which remains unadministered. The Oath should also give particulars of the former grant, showing that power was reserved to the other executor. The executor applying must also swear to and mark either the original will or more likely or usually an office copy.

The process necessary to have a grant of Probate or raise Letters of Administration is time consuming particularly in our Probate Registry that although the "eye" and "tea" are together and they are not dotted or crossed, the Register will return the documents for the eye to be dotted. That having been done and returned, the documents are again returned for the 'tea' to be crossed. Sometime ago our own Jam Bar had included in one of its publications an effigy of one and saying "Imagine I am up here for 11 years and yet my estate is not wound up".

It could be in Jamaica.