

THE ORPHAN CHAMBER AT THE CAPE

Orphan Chambers had existed in the different states of the Netherlands for some time and this Dutch Law was extended to the territories of the Dutch East India Company (*Verenigde Oost-Indische Compagnie* - VOC).¹ The Orphan Chamber (*Weeskamer*) was set up in 1673 and functioned throughout the VOC period and into the early British period. During the British period, a form of the Orphan Chamber continued under the jurisdiction of the High Court, but only to take care of orphans and no longer to administer estates. After 1834, private companies such as the South African Association for the Administration and Settlement of Estates (which later became Syfrets) took over from the Orphan Chamber as executor of estates.

'Guardian of Orphans'

At the Cape the Orphan Chamber's main responsibility was to act as legal guardian and protect the interests of orphans who were the legitimate children of free people (Company servants, free burghers and free blacks):

- If one or both parents died and left any children either under the age of 25 (and unmarried) or mentally unsound, then those children were placed under guardianship.
- If one of the child's parents survived, he/she needed to apply to the Orphan Chamber to be a guardian to their own child, unless the will already provided for this.²
- No legitimate child could be disinherited: Dutch law provided that a child must receive at the least a child's portion of the inheritance. Illegitimate children could not inherit from their father, but could inherit from their mother.³
- The Orphan Chamber was legal guardian of the orphans even if it was expressly prohibited from acting as an executor in the will of the deceased.

The Orphan Chamber had to fulfil a number of requirements common to all guardians under Dutch Law:

- ensure the making of an inventory
- look after and educate the child
- maintain the property
- settle all the debts and credits of the estate before it was divided for inheritance.⁴

Other responsibilities

After the devastating effect of the smallpox epidemic of 1713, the Council of Policy empowered the Orphan Chamber to protect the transfer of property of all free individuals at the Cape. All wills and deaths at the Cape had to be registered with the Orphan Chamber but the Chamber only inventoried and acted as executor for the categories of estates listed below.

¹ A.E. van Zwieten (1996: 320-321) demonstrates how the concept of an Orphan Chamber was long established in the Netherlands and then transported to the colonies.

² Johannes van der Linden (1828: 98). According to van Zwieten, the remaining parent was always made guardian, but had to have a second guardian appointed with him/her (1996: 325).

³ Van der Linden (1828: 87-91).

⁴ Van der Linden (1828: 101-102).

The Orphan Chamber was the executor of the estates of free persons:

- who left heirs under 25 (and unmarried) or of unsound mind
- who left heirs who were either not in the country or not apparent
- who died *ab intestato* or *ex testamento* (without a will or testament)
- if there was a specific request in the will or testament for the Chamber to act as executor
- if the will did not specifically exclude the Chamber from acting as executor.

The Orphan Chamber had to track down any possible heirs. Heirs residing outside of the country of death had to send a power of attorney proving their relationship to the deceased, and the Orphan Chamber would then pay out what was rightfully theirs. If an individual died without children or spouse, then the inheritance went to their next of kin, whether brothers, sisters, parents, or cousins (sometimes even to the 10th degree). If no heir was found within 50 years from the date of death, then the estate reverted to the government.

According to two important commentators on life at the Cape, François Valentijn during the VOC period and William Wilberforce Bird during the British period, the Orphan Chamber did a good job of looking after orphans and executing intestate estates.⁵ However, Valentijn points out (and Bird alludes to this) that as the Orphan Chamber was free to decide how much money an orphan needed to live on, they often allocated the bare minimum and used the money left over from the inheritance to help with the upkeep of poorer orphans. Whether any of this money went into the pockets of the Orphan Chamber is an open question.

The estate was usually sold through public auction so inheritance was often in the form of money not property. However, the Orphan Chamber could allow the surviving parent to administer the whole estate intact (upon guarantee of the children's inheritance) for the sake of the children.

Inheritance at the Cape

In 1822 William Wilberforce Bird, Secretary to the Governor, explained the system and process of inheritance at the Cape⁶:

Under the laws of the colony the widow takes one-half, whether it be real or personal property, and the other half is divided equally between the children, whether male or female; and if no children, to the nearest relatives of both father and mother. No one by will can deprive a child of its share ... But a man can leave to his widow, in addition to the half she inherits, one child's portion. At the death of the widow unmarried, her half descends, in like manner, to the children; but if she has a second husband, and children by him, her property goes equally between such husband and the children of both beds, as does the property of the husband at her death.

If a married person dies intestate, and leaves children under age, the Orphan Chamber is at liberty, on the application of the surviving husband or wife, to suffer him or her to remain in possession of the whole estate, on condition that an inventory be taken, and a fair valuation be made of the same, according to which valuation, the half of the net balance is assigned to the children in equal shares, and left in the hands of the survivor, provided good security be given, that the share of each of the children

⁵ William Bird (1961: 53-55); François Valentijn (1971: 173).

⁶ Bird(1823: 54-55)

will be forthcoming at their becoming of age. The principle of this regulation is, that it is in the interest of the children themselves to have their parent remaining in the undisturbed possession of his concern, in order to prevent the danger of loss, arising from a sudden disposal of the estate; and also to preserve more fully to the surviving parent, the means of educating his children.

It is always to be kept in view, that community of property among married people is the law of the colony, unless excepted or restricted by a settlement before marriage. ... there is no advantage from primogeniture .

Bird pointed out that the system of inheritance made individuals hesitate to invest large sums in their farms or houses as these would not be passed on to their descendants. He describes an auction that took place within a month of the individual's death, where the family 'bid against each other, for a slave or an article of furniture, with rancorous pertinacity'.⁷

The Commissary of Auctions - Vendu(e) Office

Many estates were put up for public auction as all outstanding debts had to be settled before the heirs could receive their inheritance. Auctions also enabled division of the estate to take place. Other reasons for auctions included remarriage or insolvency.

Auctions were a state monopoly of the Vendu Office, the Commissary of Auctions. The Commissary could charge 2,5% on fixed property and 5% on all other possessions, so public auctions were a very real source of income for the colonial government. According to Bird, by 1822 the Vendu Master employed four auctioneers, and a 'proportionate number of clerks'. Land and buildings accounted for about one third of what was sold at public auctions. It was unusual to buy perishable foodstuffs, wine and cattle at a public auction.⁸

The records of sales, *vendurollen* (MOOC10), list all the items sold, names of purchasers, and the price paid. These records, like the inventories, are an invaluable source of information for researchers interested in the life and times of people at the Cape during the VOC period and into the early British period.

The Vendu Office was a source of much short-term credit:

- the auctioneer could extend credit to merchants during an auction, at his discretion
- the actual sales of an auction could be copied onto an official stamp that was readily accepted across the colony as a form of payment (like a cheque guaranteed by the Vendu Office).

Economic role of the Orphan Chamber

Making an inventory and tracking down all the possible heirs could be a costly business, especially as so many Company employees were unmarried and without (legitimate) children, and any relatives they had were usually in Europe or the East. We know that Orphan Chambers in the Netherlands were allowed to charge a 2,5% administration fee for administering

⁷ Bird (1961: 170)

⁸ Bird (1961: 45, 145).

estates where the Orphan Chamber was forced to act as an executor by law, and about 5% for administering other estates.⁹

The money in the Orphan Chamber's coffers increased rapidly.¹⁰ According to Van Zwieten, the Orphan Chambers were allowed to invest the money they held but only in investments that carried a minimal risk, such as property. In the case of the Orphan Chamber in Amsterdam, investments had to yield 8,5% interest.¹¹

The Orphan Chamber at the Cape invested in long-term mortgages to private individuals, mostly for agricultural ventures. For the first 120 years of the settlement there was no formal banking system. It was only in 1773 that the Government Loan Bank was established. Before then if you needed credit you approached the Orphan Chamber, the Vendu Office, the Church, or individual money-lenders. At the Cape it was the Orphan Chamber and the Church that issued mortgages and the Vendu Office that issued short-term loans.¹²

The Orphan Chamber was very involved in the local economy. In 1825, for instance, the Board of Orphan Masters supported a petition against the devaluation of the rixdollar on the grounds that many individuals would go bankrupt. It seems likely the Board was also looking after its own investments.¹³

'Honourable Members'

Both Bird and Valentijn indicate that the secretary and burgher members were selected from the wealthiest and most prominent members of free 'European' society. It seems that this was also the case in the Orphan Chamber in New Amsterdam (now New York), on explicit instructions from Amsterdam.¹⁴ Schutte suggests that those burghers appointed to the Board of the Orphan Chamber at the Cape were selected from a 'double list' drawn up by the Council of Policy,¹⁵ but unfortunately, he does not indicate how this was done.

According to Valentijn, the Orphan Chamber consisted of a Secretary (a bookkeeper who seemed to be appointed for an extended period), the Secunde (the Governor's Second-in-Command, often responsible for financial matters), three other Company officials, and three burghers.¹⁶ In the British period, according to Bird, the Orphan Chamber consisted of a president, a vice-president, four members and a number of clerks.

During the VOC period the Orphan Chamber would deduct their wages according to a fixed schedule from the money in their coffers, before sending the remainder to the government.

⁹ Van der Linden (1828: 123).

¹⁰ Robert Ross (1989: 259) indicates how rapidly this fund grew: in 1720 the total stood at 200, 000 rixdollars, in 1780 at 400, 000, in 1800 at over 1 million, and in 1830 at around 3 million rixdollars.

¹¹ Van Zwieten (1996: 334).

¹² Ross (1989: 258-262).

¹³ Ross (1989: 260).

¹⁴ Van Zwieten (1996: 326-327).

¹⁵ Schutte (1989: 290).

¹⁶ Valentijn (1971: 173).

According to Bird, this allowed a great deal of corruption. During the British period the Orphan Chamber were paid directly by the colonial government.¹⁷

It is clear that positions in the Orphan Chamber went along with considerable wealth but it is not always possible to find out how and when individuals involved with the Orphan Chamber Committee amassed their wealth, particularly as they had to be relatively well off to be appointed.

References

- W.W. Bird, *The State of the Cape of Good Hope in 1822* (London: John Murray, 1823)
- R. Ross, 'The Cape of Good Hope and the World Economy, 1652-1835', in R. Elphick & H. Giliomee (eds), *The Making of South African Society, 1652-1840* (Cape Town: Maskew Miller Longman, 1989)
- G.J. Schutte, 'Company and colonists at the Cape', in R. Elphick & H. Giliomee (eds), *The Making of South African Society, 1652-1840* (Cape Town: Maskew Miller Longman, 1989)
- F. Valentijn, *Description of the Cape of Good Hope with Matters Concerning it* (Amsterdam, 1726), E.H. Raidt (ed.) (Cape Town: Van Riebeeck Society, second series, no.2, 1971)
- J. van der Linden, *Institutes of the Laws of Holland* (London, 1828)
- A.E. van Zwieten, 'The Orphan Chamber of New Amsterdam', *The William and Mary Quarterly* 3rd Series 53 (2) April 1996

[Please note that this section on the Orphan Chamber is work-in-progress. E-mail info@capetranscripts.co.za if you have additional information or if you would like to correct/clarify this section.]

¹⁷ Bird (1961: 56).