

CHAPTER 359

An Act Respecting the Probate Court
and the Procedure Therein

Short Title

1 This Act may be cited as the *Probate Act*.

INTERPRETATION

Interpretation

2 In this Act,

(a) "court" means the court of probate in each probate district;

(b) "judge" means the judge of a county court for the county court district in which the probate district is situated:

(c) "order" includes decree;

(d) "personal property" or "property" includes choses in action:

(e) "probate district" or "district" means the district, whether it is a county or part of a county, in which a court of probate has been established and was, immediately before the first day of March, 1897, exercising probate jurisdiction;

(f) "registrar" means a registrar of probate;

(g) "representative" includes an executor and an administrator;

(h) "will" includes a testament, a codicil and every other testamentary instrument of which probate may be granted. R.S., c. 238, s. 1.

PROBATE DISTRICTS

Probate districts

3 As heretofore,

(a) each one of the counties in the Province, excepting the Counties of Guysborough and Shelburne, shall constitute a probate district;

(b) each of the two districts of Guysborough and St. Mary's in the County of Guysborough, and each of the two districts of Shelburne and Barrington, in the County of Shelburne, shall constitute a probate district. R.S., c. 238, s. 2.

THE COURTS

Courts of probate continued

4 The courts of probate for the several probate districts in the Province are hereby continued under that name. R.S., c. 238, s. 3.

THE REGISTRAR OF PROBATE

Registrar of probate

5 (1) The registrar of probate for each district shall be appointed by the Governor in Council, and every registrar of probate shall hold office during good behaviour, provided however that the Governor in Council may revoke the appointment of a registrar of probate who attains or has attained the age of seventy years.

Requirements prior to commencing duties

(2) The registrar before entering upon the duties of his office shall

(a) take an oath that he will faithfully perform the duties of his office, which oath may be administered by a judge of a county court or the warden of a municipality;

(b) give a bond to Her Majesty, with such sureties. in such amounts. and in such form as the

Governor in Council directs, for the faithful performance of the duties of his office as such registrar, and for indemnifying all persons who are injured by his default or misconduct; and

(c) satisfy the Governor in Council that he has provided a suitable place for the custody of all wills, papers, documents and books connected with his office which come to his charge or keeping.

Filing of oath and bond

(3) The registrar shall forthwith file such oath and bond in the office of the Attorney General.

Care and custody of books and papers

(4) The registrar shall have the care and custody of all books and papers belonging to the court.

Books required

(5) The registrar shall keep a book for the registration of wills, a book for the registration of all letters, orders, and decrees granted by the court, and a book of acts, containing a short abstract of the proceedings of the court, all properly indexed, and the Governor in Council may from time to time prescribe either generally or in the case of any particular registrar, the kind of books to be so kept and the method or means by and the manner in which entries may or shall be made therein.

Duty to register documents

(6) The registrar shall register all letters granted by the court and file and register all orders and decrees.

Other duties of registrar

(7) Generally the registrar shall perform such other ministerial duties as are prescribed in this Act, or were performed by registrars of probate immediately before the first day of March, 1897.

Deputy registrar

(8) Every registrar may, subject to the approval of the Governor in Council, appoint a person to be deputy registrar, who may perform any of the duties of the registrar and for whose acts

the registrar and his sureties shall be responsible.

Vacancy in office of registrar

(9) Upon a vacancy occurring in the office of registrar for any district, such deputy registrar shall discharge the duties of the registrar for such district and shall have all the rights and powers of a registrar until there is a registrar for such district, and all acts done by such deputy registrar during such period shall be as valid and effectual as if done by a registrar.

Additional deputy registrar in Halifax County

(10) The registrar for the probate district of the County of Halifax may, subject to the approval of the Governor in Council, appoint a person to be additional deputy registrar who may perform any of the duties of the registrar and for whose acts the registrar and his sureties shall be responsible.

Women

(11) A woman shall be eligible for appointment as registrar of probate, deputy registrar of probate or acting registrar of probate.

Absence or inability to act of registrar and deputy

(12) Whenever a registrar is ill or he either is or is about to be temporarily absent from the probate district for which he is registrar, or is a witness in any matter, or is otherwise incapacitated or disqualified, and there is no deputy registrar, or if there is a deputy registrar, and he is for any reason unable to act, the Governor in Council may appoint a person to act in the place and stead of such registrar during such illness, temporary absence or other incapacity, or for the disposal of the matter in which the registrar is disqualified, and such person shall, during such illness, temporary absence or other incapacity or for the disposal of the matter in which the registrar is disqualified, as the case may be, have all the powers and discharge all the duties of the registrar.

Public Service Superannuation Act

(13) Notwithstanding the provisions of subsection (1), Section 16 of the Public Service Superannuation Act

applies to a registrar of probate who is in receipt of a yearly salary pursuant to the Public Offices and Officers Act. R.S., c. 238, s. 4.

Seal

6 The seals already provided for the courts of probate shall continue in use, but any judge may, with the approval of the Governor in Council, cause the seal of the court from time to time to be broken, altered or renewed. R.S., c. 238, s. 5.

Certified document is evidence

7 All letters, licences, decrees, orders and instruments of the court, and copies thereof, purporting to be sealed with the seal of any court of probate, shall, in all courts in the Province, be received in evidence without further proof thereof. R.S., c. 238, s. 6.

Office hours

8 The days and hours during which the office of any registrar of probate shall be open for the transaction of business shall be such as are from time to time prescribed under the Public Offices and Officers Act. R.S., c. 238, s. 7.

If annual fees to registrar under five hundred dollars

9 If the amount of fees received by any registrar of probate during any year ending on the thirtieth day of September, together with the amount of fees earned by him in such year but not yet paid to him, as shown by his return of such fees to the Attorney General as required by the Costs and Fees Act, do not equal five hundred dollars, the Attorney General shall pay to such registrar of probate out of the Consolidated Fund of the Province a sum equal to the difference between the amount of the fees so received or earned and five hundred dollars. R.S., c. 238, s. 8.

JURISDICTION AND POWERS**Jurisdiction of court**

10 Every court shall have jurisdiction throughout the Province, and all letters of probate, letters of adminis

tration, licences, orders and process of every such court shall have effect, and may be enforced, throughout the Province, and all sheriffs in the Province shall be officers of the court and shall carry out its orders and process. R.S., c. 238, s. 9.

Powers of court

11 (1) The court shall have jurisdiction and power

(a) to grant probate of wills and letters of administration, whether general or limited, of the estates of deceased persons;

(b) to revoke or cancel such probate of wills and letters of administration:

(c) to effect and carry out the judicial administration of the estates of deceased persons through the representatives, and to hear and determine all questions, matters and things in relation thereto necessary for such administration:

(d) to appoint guardians, and to take the accounts of such guardians under the Guardianship Act.

Existing powers and jurisdiction continued

(2) Generally the court shall have and exercise all the powers and jurisdiction exercised by the courts of probate in existence immediately before the first day of February, 1901, and by the judges of probate.

Supreme court jurisdiction unaffected

(3) Nothing herein contained shall be construed in such a way as to deprive the Supreme Court of jurisdiction in such matters. R.S., c. 238, s. 10.

PROBATE AND LETTERS OF ADMINISTRATION

Jurisdiction if fixed place of abode in Province

12 (1) The grant of probate or letters of administration shall belong to the court of probate for the district in

which the testator or intestate had at the time of his death his fixed place of abode.

Jurisdiction if no residence or fixed abode in Province

(2) If he had no such fixed place of abode, or resided out of the Province at the time of his death, the grant may be made by the court of probate for any district in which the testator or intestate had property at the time of his death, provided it has not been previously made by a court having jurisdiction in another district.

Jurisdiction in other cases

(3) In other cases the grant shall belong to the court of probate of any district. R.S., c. 238, s. 11.

Application to be written and entered

13 (1) All applications for the probate of wills, letters of administration or citations, shall be made in writing, and shall be entered in the book of acts.

Content of application for administration

(2) An application for administration of the estate of an intestate shall set out the names, addresses, occupations and relationships to the deceased of all persons entitled to any interest in his estate by devolution, so far as known. R.S., c. 238, s. 12.

Affidavit respecting place of abode

14 (1) When the testator or intestate was resident in the Province at the time of his death, the place of abode of the testator or intestate, at the time of his death, shall be made to appear by affidavit, filed by the person, or some one of the persons, making the application.

Conditions for grant of probate or letters

(2) Thereupon, and upon proof of the will, or, in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted under the seal of such court of probate. R.S., c. 238, s. 13.

Affidavit where no residence in Province

15 (1) Where the testator or intestate had no fixed place of abode in, or resided out of, the Province at the time of his death, and the deceased died leaving personal or real property within the probate district in which the application is made, the same shall be made to appear by affidavit, filed by the person, or some one of the persons, making the application, and that also notice of the application has been published at least three times successively in the Royal Gazette.

Conditions for grant of probate or letters

(2) Thereupon, and upon proof of the will, or in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted under the seal of such court of probate. R.S., c. 238, s. 14.

Affidavit is conclusive

16 (1) The affidavit as to the place of abode and property of a testator or intestate, under Sections 14 and 15 for the purpose of giving a particular court jurisdiction, shall be conclusive for the purpose of authorizing the exercise of such Jurisdiction.

Content of affidavit

(2) Where the application sets out the place of abode and property of the testator or intestate, the affidavit shall be sufficient if it verifies the same without repeating the particulars. R.S., c. 238, s. 15.

Grant valid despite no property or abode in district

17 No grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the particular district at the time of his death, or had not property therein at the time of his death. R.S., c. 238, s. 16.

Grant protects those dealing with estate despite error

18 Every probate and administration granted by a court of probate shall effectively discharge and protect all

persons paying money to, or dealing with, any executor or administrator, thereunder, notwithstanding any defect in, or the want of, such affidavit as is hereby required, but in case it is made to appear to the court before whom any matter is pending under this Act, that the place of abode of the testator or intestate, or the situation of his property, has not been correctly stated in the affidavit, the court may stay all further proceedings, and make such order as to the costs of the proceedings as it thinks just. R.S., c. 238, s. 17.

Letters limited to personal property

19 (1) A person entitled to take out letters of administration of the estate of a deceased person shall be entitled to take out letters limited to the personal property of the deceased exclusive of the real property, but subject to the provisions of this Act relative to the selling, leasing or mortgaging of real property for the payment of debts.

Letters respecting real property

(2) If a person dies leaving no personal property, letters of administration in respect to the real property of such person may be granted, and such real property may be sold, let or mortgaged under the said provisions. R .S., c. 238. s. 18.

Deposition of witness

20 When any will is offered for probate, and the witnesses live out of the Province, or more than twenty miles distant from the registry, or by reason of age or illness are unable to appear and give evidence in court, the deposition of such witnesses, in writing, taken before any person duly authorized by the court, shall have the same force and effect as if such witnesses were present and testified in open court. R.S.,c.238,s. 19.

Persons entitled to administration

21 Administration of the estate of an intestate, or of an estate partly or wholly unadministered, owing to the death or removal of the administrator, shall be granted to some one or more of the persons hereinafter mentioned, and they shall respectively be entitled thereto in the following order:

(a) first - the surviving spouse or next of kin, or both, as the court thinks fit, and if they do not voluntarily either take or renounce administration, they shall, if resident within the Province, be cited for that purpose;

(b) second - where there is no adult next of kin or adult residuary beneficiary residing in the Province of a person who dies wholly or partially intestate, in or out of the Province and the executors have renounced their right to apply for probate, the Public Trustee is entitled to apply for and to receive a grant of letters of administration with will annexed of the estate of that person in priority to all other persons;

(c) third - if the persons entitled under clauses (a) and (b) when cited do not proceed to take out administration within ten days after the return day of the citation the court on the application of

(i) a creditor, or

(ii) a person having a cause of action against the estate,

may grant administration of the estate either to the applicant or to such other person as the court thinks fit;

(d) fourth - any trust company authorized by statute to act in the administration of estates, if the person or persons in priority entitled to administration under this Act consent, in writing, to the granting of such administration to such company, may be appointed administrator. R.S., c.238, s.20; 1976, c.16, s.16; 1978, c.42, s.9.

Associate in administration

22 In case the surviving spouse or such of the next of kin as is selected by the court to administer any estate desires it, the court may associate with her or him in the administration such person as it thinks fit and proper for that purpose. R.S., c.238, s.21; 1978, c. 42, s. 10.

ADMINISTRATION WITH THE WILL ANNEXED

Administration with will annexed

23 Upon the refusal of the executor to accept the trust or if there is no executor to administer the trusts in the will the court shall grant administration of the estate with will annexed to the person or persons who would have been entitled to the administration thereof if the deceased had died intestate. R.S., c.238, s.22.

ADMINISTRATION DURING ABSENCE

Administration in absence of person entitled thereto

24 In the case of an application for letters of administration or probate, when the person or persons entitled to administration or probate are without the Province, the court shall reserve the right of such absent person, and may, in its discretion, grant a temporary administration, and appoint the applicant, or such other person as the court thinks fit, to be administrator of the property of the deceased person for a limited time or until the administration is revoked on the return of any person entitled. R.S., c.238, s.23.

Powers of and control over administrator

25 The administrator appointed under Section 23 or 24 shall have all the rights and powers of a general administrator, and shall be subject to the immediate control of the court and act under its direction. R.S., c.238, s.24.

ADMINISTRATION PENDENTE LITE

Administrator pendente lite

26 (1) Pending any action or contestation touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or grant of administration, the court may appoint such person as the court thinks fit administrator of the property of the deceased person.

Rights and powers

(2) The administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the property.

Subject to control of court

(3) Every such administrator shall be subject to the immediate control of the court and act under its direction. R.S., c.238, s.25.

ADMINISTRATION AD COLLIGENDA BONA

Administration ad colligenda bona

27 Where there is danger to any portion of the estate by reason of the same being of a perishable or precarious nature, and the persons entitled have not applied for administration, and there is likely to be delay, the court may grant letters ad colligenda bona to such person as the court thinks fit, but such letters shall not be granted without due security being first taken. R.S., c.238, s.26.

ADMINISTRATION FORMS

Forms

28 Forms A to J in the Schedule to this Act shall be used for the respective purposes therein mentioned, with such variations as the circumstances require. R.S., c.238, 27

OATH AND ADMINISTRATION BONDS

Oath of representative

29 Every executor or administrator, before entering upon the duties of his office, shall take an oath in Form J, K or L in the Schedule to this Act for the performance of the duties of the office, and every such oath shall be subscribed by him. R.S., c.238, s.28.

Administration bond

30 (1) Every person to whom a grant of administration, whether general or limited, is committed, shall

before entering upon the duties of his office, give a bond with two sureties, to be approved by the court, in such sum as it directs, conditioned for duly collecting, getting in and administering the personal property of the deceased, which bond shall be in Form M or N in the Schedule to this Act, with such variations as circumstances require or as the court directs.

Death or insolvency of surety

(2) The court may, on summary application and due proof that any surety on any administration bond has died or become insolvent, order the administrator to enter into a new bond, with two sureties to be approved by such court, in such sum as it orders, and if the administrator does not obey such order may remove him, and thereupon proceed to appoint a new administrator, in the same manner as if such administrator had died.

Public Trustee Act, 1906 (England)

(3) In case of any administration granted to the public trustee appointed pursuant to the Public Trustee Act, 1906 (England), or in case of the appointment of such public trustee to act in the capacity of administrator, such bond or security shall not be required, but such public trustee shall be subject to the same liability and duties as if he had given such bond or security. R.S., c.238, s. 29.

REMOVAL OF EXECUTORS AND ADMINISTRATORS

Executor wasting estate

31 (1) The court of probate, upon the summary application of anyone interested in the estate, if it is proved to the satisfaction of the court that an executor is wasting the estate, may order the executor to give security for the performance of his duty.

Removal of executor

(2) If it is proved to the satisfaction of the court that he has not obeyed such order, or if in any case it is proved that an executor is residing beyond the jurisdiction of the court, and is neglecting to settle or administer the estate, or if it is proved that an executor has failed to comply with an order to pay into a chartered bank any money of an estate

remaining in his hands made under this Act, the court may remove such executor from his office and appoint another person in his place, who shall have the powers and perform the duties of an administrator with the will annexed.

Notice of proposed removal

(3) If proceedings are taken to remove an executor because he is residing abroad, six weeks publication in the Royal Gazette of the nature of the application shall first be made. R.S., c.238, s.30.

Removal of administrator

32 (1) The court, upon the summary application of any surety or anyone interested in the estate, may remove an administrator from his office and appoint another person in his place, if it is proved that such administrator has left the Province without any apparent intention of returning, or is wasting the estate, or is insolvent, or of unsound mind, or otherwise incapacitated from discharging the duties of his office, or has failed to comply with an order to pay into a chartered bank any money of an estate remaining in his hands made under this Act.

Citation to appear prior to removal

(2) The administrator shall be first duly cited to appear before the court and required to account under oath.

Liability of surety of removed administrator

(3) Notwithstanding such removal, sureties for such administrator shall continue liable for any act or omission of the administrator up to the time of such removal, and for any assets of the estate which have come into his hands. R.S., c.238, s.31.

Proceeding during temporary administration

33 If, before the revocation of any temporary administration, proceedings have been commenced by or against any administrator so appointed, any court in which the proceedings are pending, or a judge thereof, may order that the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceedings had been originally by or against such new executor or

administrator, but subject to such conditions and variations, if any, as the court directs. R.S., c.238, s.32.

ANCILLARY PROBATE AND
LETTERS OF ADMINISTRATION

Ancillary probate or letters

34 (1) Where a court of probate in the United Kingdom, or in any British province, territory or possession, has granted probate or letters of administration in respect to the estate of a deceased person, the probate or letters so granted may, on being produced and a copy thereof deposited with a court of probate in this Province, be sealed with the seal of that court, and thereupon shall be of like force and effect and have the same operation in this Province as if granted by a court of probate of this Province, provided that the court shall before receiving a probate or letters of administration under this Section, take a bond in the case of letters of administration in a sum sufficient to cover the property, if any, in this Province to which the letters of administration relate, and may require such evidence as it thinks fit as to the domicile of the deceased person.

Effect of duplicate or copy or exemplification

(2) For the purpose of this Section,

(a) a duplicate of any probate or letters of administration; or

(b) a copy or exemplification thereof,

under the seal of the court granting the same shall have the same effect as the original. R.S., c.238, s.33.

Foreign probate or letters

35 (1) In respect to foreign probates and letters of administration,

(a) whenever application is made to the court by the executor for probate of a will proved without the Province, the testator having had at the time of his death real or personal property within the Province; or

(b) whenever administration of the estate of any person dying out of the Province has been granted in the place in which the deceased was last domiciled out of the Province, and the person to whom the same was granted makes an application to have administration of the property within the Province which was the property of the deceased at the time of his death, the court shall fix a time and place for hearing any such application.

Notice of hearing

(2) Notice of the hearing of such application at such time and place shall be given by publication in the Royal Gazette in three successive issues.

Application of general provisions

(3) Upon such application the provisions relative to the granting of original probate and letters of administration, and as to security to cover the property within this Province, shall apply, except that the foreign administrator shall be preferably entitled to be administrator and the administration granted to him shall supersede any other administration granted in respect to such property. R.S., c.238, s.34.

PROOF IN SOLEMN FORM**Proof in solemn form**

36 (1) Any executor or person desiring administration under the will, and any heir, devisee, legatee, next of kin or other person interested in the estate of the deceased, may have a will proved in solemn form of law and its validity determined, and notwithstanding it has already been proved in common form and probate granted.

Procedure

(2) The manner of such proof shall be as follows:

(a) the executor or person desiring administration may of his own motion take out a citation to have a will proved in solemn form of law and its validity determined;

(b) unless such executor or person has taken out such citation, any heir, devisee, legatee, next of kin or other person interested in the estate, may, upon affidavit verifying the grounds of his application, apply to the court for a citation directed to the executor or person requiring him to show cause why he should not take out the citation, and upon the return of the citation, the court may, unless such cause is shown, make an order requiring the executor or person within twenty days after service of the order upon him to take out a citation to have the will proved in solemn form and its validity determined, and the executor or person within twenty days after such service, shall take out such citation and proceed with the same pursuant to this Section, and if such application is made after six months from the date of the proof in common form, the applicant shall account for his delay, and shall give a bond in the sum of one hundred and fifty dollars to pay any costs awarded against him;

(c) the petition of such executor or person shall contain, so far as the petitioner can ascertain the same, the names, ages, occupations and places of residence of the heirs, devisees, legatees and next of kin of the deceased, and shall be verified by affidavit;

(d) the citation may be in Form O in the Schedule to this Act and shall contain the names of all the heirs, devisees, legatees and next of kin;

(e) where the heirs, devisees, legatees and next of kin reside in the Province, such citation shall be made returnable at a time not less than eight weeks from the time of issuing the same, and shall be published in the Royal Gazette for eight weeks, and served personally upon each of such heirs, devisees, legatees and next of kin, at least thirty days before the return day thereof;

(f) where any of such heirs, devisees, legatees or next of kin resides out of the Province,

such citation shall be made returnable after such length of time, and shall be published and served for such period before the return thereof, as to the court seems right, having regard to the distance from the Province at which such heirs, devisees, legatees and next of kin, or any of them, are;

(g) if at the time of filing the petition, or at any time thereafter, it is made to appear to the court that owing to absence from the Province, or other cause, personal service of the citation on any devisee, legatee or next of kin cannot be made, the court may make an order for the publication of the citation for a period of three months in the Royal Gazette, and in some other newspaper to be named by the court, and the same shall be so published, and such publication shall have the like effect as to such heir, devisee, legatee or next of kin so being out of the Province, as if the citation had been personally served upon him;

(h) upon due proof of such publication and service, or publication where personal service cannot be effected, the court shall hear the alleged will proved in solemn form of law, and decide in regard to the validity of the same, according to the evidence and the usual practice of the court of probate. R.S., c.238, s.35.

Proof in solemn form required

37 (1) It shall not be necessary in any case to prove a will in any but the common form, unless the executor or person having or desiring probate, or an heir, devisee, legatee, next of kin or other person interested in the estate requires the same.

Proof in common form sufficient

(2) Proof in common form of any will, and the probate, granted thereon, shall be sufficient to all intents and purposes unless proof in solemn form is so required. R.S., c.238, s.36.

INVENTORY AND APPRAISEMENT OF ESTATE

Filing of inventory

38 Every executor or administrator shall, within three months after probate or letters of administration have been granted, or such extended time as the court allows, exhibit and file in the registry of the court a full and true inventory in Form P in the Schedule to this Act upon oath, of the real and personal property of the deceased which has come to his possession or knowledge. R.S., c.238, s.37.

Filing of supplementary inventory

39 If any real or personal property of the deceased comes to the possession or knowledge of the executor or administrator after he has filed such inventory, he shall, within a reasonable time thereafter, file in the registry a further inventory upon oath of the same. R.S., c.238, s.38.

Failure to file

40 Any executor or administrator neglecting to file an inventory after having been duly cited to file the same shall forfeit twenty dollars for each month's neglect, to be recovered in an action of debt by any person having an interest in the estate of the deceased. R.S., c.238, s.39.

Not included in inventory

41 In making the inventory the following articles shall be omitted, and shall not be considered as assets, or be administered as such, notwithstanding the estate of the deceased is insolvent, namely,

(a) all the paraphernalia and articles of apparel or ornament of the surviving spouse, according to the degree and estate of the deceased spouse and also the apparel of the infant children;

(b) the wearing apparel of the deceased, not exceeding forty dollars in value, which shall be distributed at the discretion of the executor or administrator among the family of the deceased;

(c) such provisions and other articles as are necessary for the reasonable sustenance of the surviving spouse and family of the deceased for ninety days after his death. R.S., c.238, s.40; 1978, c.42, s.11.

Appointment of appraisers

42 (1) The court, on granting probate or letters of administration, and as often afterwards as is necessary or advisable, shall by warrant of appraisement in Form Q in the Schedule to this Act appoint two or more disinterested persons as appraisers, who shall estimate and appraise all the real and personal property of the testator or intestate.

Property in different places

(2) Where property is in different places two or more warrants of appraisement may be issued, and two or more inventories may be made.

Duty of appraiser

(3) The appraisers shall aid the executor or administrator in making the inventory.

Oath

(4) Every appraiser shall, before making the appraisement, make oath in Form R in the Schedule to this Act truly and impartially and according to the best of his knowledge and ability to appraise the property which is exhibited to him by the executor or administrator.

Certification of oath

(5) The taking of the oath shall be certified on the warrant of appraisement by the person administering the same

Return of warrant of appraisement

(6) Every warrant of appraisement shall be returned with the inventory to the registry.

Temporary allowance to maintain family

(7) If the articles omitted from the inventory are inadequate for the reasonable maintenance of the surviving spouse and family of the deceased or either, the court may make such allowance out of the deceased's estate for his surviving spouse and family, or either, as it may deem right,

not exceeding an amount sufficient for the surviving spouse's or family's maintenance for four months after the deceased's death, and such allowance may be made whether the deceased's estate is insolvent or not. R.S., c.238, s.41; 1978, c.42, s.12.

CLAIMS OF CREDITORS

Advertisement for claims of creditors

43 (1) Every executor or administrator, previous to the payment of debts or distribution of the estate of the deceased, shall by advertisement in the Royal Gazette, if the estate is under eight hundred dollars for one month, and in all other cases for six months, call on all persons who have any demands upon the estate of the deceased to exhibit such demands within six months from the date of the advertisement.

Form of advertisement

(2) The advertisement referred to in subsection (1) shall be in such form or forms as the Attorney General prescribes.

Affidavit of creditor

(3) Such demands, when exhibited, shall be attested to by the claimant, or where the claimant is an incorporated company, by an officer thereof, or in the absence from the Province of a claimant or the officers thereof, by his or its agent, and the affidavit shall state whether the creditor is or is not a secured creditor and shall be in the Form S in the Schedule to this Act or to like effect with such variations as may be required.

Informality and amendment of claim

(4) No claim shall be rejected in the final decree for any mere informality in the same, or the attestation thereof, but the person claiming to be a creditor may amend the same.

Effect of filing of claim

(5) The creditor may file a copy of his claim with the registrar, and the filing thereof shall be held to be the bringing of an action to prevent the operation of any statute of limitations.

Application for adjudication of claims

(6) The executor or administrator, instead of waiting until the final settlement of the estate, may at any time after the said six months have elapsed apply to the court to fix a time for the adjudication of claims, and to grant a citation to creditors to come in and prove them.

Powers of court upon adjudication

(7) At the time appointed for the adjudication of claims of creditors, or at any adjournment thereof, the court may allow or disallow any of the claims, or any part thereof, respectively, and may direct such investigation of all or any of the claims, and require such further particulars, information or evidence relating thereto as is deemed just.

Action against representative of estate

(8) No action shall be brought against any executor or administrator in any court, except by leave of a judge of such court, for the period of one year after probate or letters of administration have been granted, which period shall be excluded in computing the time allowed by the Limitation of Actions Act. R.S., c.238, s.42.

Allowable claim where security realized

44 (1) If a secured creditor realizes his security he may claim for the balance due to him, after deducting the net amount realized.

Allowable claim where security surrendered

(2) If a secured creditor surrenders his security to the executor or administrator, he may claim for his whole debt. R.S., c.238, s.43.

Affidavit of secured creditor

45 (1) If a secured creditor does not either realize or surrender his security he may, if he wishes to rank for payment, and he shall within thirty days after demand upon him by the executor or administrator or within such further time as may be allowed by the registrar, file with the executor or administrator an affidavit in the Form S in the Schedule to this Act stating therein full particulars of his security or securities, the date when each security was given and the value at which he assesses each thereof.

"secured creditor" defined

(2) A "secured creditor" means a person holding a mortgage, pledge, charge, lien or privilege on or against the property of the deceased, or any part thereof, as security for a debt due or accruing due to him from the deceased.

Amount due to creditor

(3) A creditor shall be entitled to receive payment in respect only of the balance due to him after deducting the assessed value of his security.

Redemption of security

(4) Where a security is so valued, the executor or administrator may at any time before payment of such balance redeem such security on payment to the creditor of the assessed value. R.S., c.238, s. 44.

Sale of secured property

46 (1) If the executor or administrator is dissatisfied with the value at which a security is assessed, or if a secured creditor who has neither realized nor surrendered his security fails to assess such security within the period above-mentioned, the executor or administrator may require that the property comprised in the security be offered for sale at such time and on such terms and conditions as the court or registrar may direct.

Bid or purchase by estate or creditor

(2) If the sale be by public auction the creditor, or the executor or administrator on behalf of the estate, may bid or purchase.

Costs and expenses of sale

(3) The costs and expenses of the sale made pursuant to this Section shall be in the discretion of the court or registrar, as the case may be. R.S., c.238, s.45.

Creditor may require election respecting redemption

47 Notwithstanding subsection (4) of Section 45 and Section 46, the creditor may at any time, by notice in writing, require the executor or administrator to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the executor

or administrator does not, within thirty days after receiving the notice, or such further time or times as the court may allow, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it, and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued. R.S., c.238, s.46.

Deemed amended valuation of security

48 If a creditor, after having valued his security, subsequently realizes it, or if it is realized under Section 45, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor. R.S., c.238, s.47.

Right of creditor to amend valuation and claim

49 (1) If an executor or administrator has not elected to acquire the security as hereinbefore provided a creditor may at any time amend the valuation and claim.

Non-compliance with Sections 44 to 48

(2) If a secured creditor does not comply with Sections 44 to 48, he shall be excluded from all right to exhibit any demand upon the estate in respect of the debt secured. R.S.. c.238. s.48.

SALE OF REAL PROPERTY TO PAY DEBTS

Licence to alienate real property to pay debts

50 (1) If the personal property of the deceased is insufficient for the payment of his debts and the legacies or the costs and expenses incurred by the executor or administrator for the benefit of or in relation to the estate of the deceased, the court may, in its discretion, grant a licence for selling, mortgaging or letting for a term not exceeding twenty-one years, the whole or such part of the real property of the deceased as it deems necessary.

Which real property is subject to alienation

(2) Only such real property as is charged with the payment of legacies, or is undevise, may be sold, mortgaged or leased for the payment of legacies.

Undevise real property to be alienated first

(3) The undevise real property, if any, shall be first sold, mortgaged or leased, unless it appears from the will that a different arrangement of the estate for the payment of the debts, legacies, costs and expenses was intended by the testator, in which case such estate shall be applied for such purpose in accordance with the provisions of the will. R.S., c.238, s.49.

Affidavit

51 (1) The affidavit in Form T in the Schedule to this Act upon which the application is made, shall set forth a full and detailed statement of the claims against such estate and the deponent's belief that such claims are bona fide, and a further statement showing the personal property and the assets collected.

Objection to licence to sell

(2) If any person interested in such estate shall, before the day of selling, mortgaging or leasing of the same, petition the court against the granting of such licence, or for the revocation thereof, and praying that an inquiry may be had as to the necessity of such selling, mortgaging or letting, the same shall be postponed for such reasonable time as is deemed proper, and the persons interested shall be cited to appear before the court and be heard in respect to the granting of such licence.

Decision by court

(3) If, after hearing the parties and the evidence adduced, the court is satisfied that the granting thereof is not necessary, it shall forthwith refuse or revoke such licence, but if it deems the objection to the granting of such licence frivolous, the party so objecting shall pay the costs of the application as well as all costs consequent on the postponement. R.S., c.238, s.50.

Form of licence

52 (1) Every such licence in Form U in the Schedule to this Act shall contain a full and accurate description of the real property in respect to which it is granted but such licence may provide for the use of a shortened description of such real property in all notices and advertisements required by Section 57.

Grant of licence to remaining representative

(2) If there is more than one representative, and one of them is absent from the Province or is under any disability, the licence may be granted to the remaining representative. R.S., c.238, s.51.

Bond

53 (1) Before any licence is issued the executor or administrator shall give a bond to the registrar in such amount as the court directs, with two sureties approved by the court, conditioned for the faithful application by such executor or administrator of all money by him under such licence, and for the due accounting for the same before the court.

Form of bond

(2) Such bond shall be in Form V in the Schedule to this Act, with such variations as circumstances require, or as the court directs. R.S., c.238, s.52.

Failure to give bond

54 If any executor or administrator does not give such security within a reasonable time, the court may, on the application of any person interested, order the executor or administrator, after being first duly cited, to give such security within a period to be named in the order, and if such executor or administrator, without sufficient cause, neglects so to do, the court may appoint some other person interested in the estate to act as administrator and to be named in a licence for selling, mortgaging or letting the real property, and applying the proceeds upon his giving the security required. R.S., c.238, s.53.

Entry and registration of licence and use as evidence

55 Every licence shall be entered in the registrar's book, and a copy thereof, duly certified by the judge or registrar, shall be registered in the registry of deeds for the registration district in which the real property is situated, and such certified copy, or a copy thereof from the registry certified under the hand of the registrar of deeds, shall be evidence of such licence in all courts without further proof. R.S., c.238, s.54.

Duration of licence

56 No licence shall be in force for more than one year after the issuing thereof, nor, if an application is made to revoke the same, for more than one year after the granting of such licence is confirmed. R.S., c.238, s.55.

Notices and public auction

57 (1) Where the executor or administrator has obtained a licence for the selling, or letting of real property, he shall give public notice of the time and place thereof by advertising the same in the Royal Gazette, and by four insertions in a newspaper, if any, published in the county, or if there is no such newspaper, in a newspaper circulating in the county, the first of such insertions to be thirty days previous to the time fixed for the sale, and by posting up notices thereof in public places in the locality in which the real property lies, thirty days previous thereto, and shall proceed to sell or let the same by public auction at the time and place named in the advertisement.

Description of property in notice

(2) In the notices required by subsection (1) it shall not be necessary to describe the real property by metes and bounds or as described in any conveyance or instrument, provided the description used in such notices is approved by the registrar of probate for the probate district in which such real property is located and provided further that all notices containing a shortened form of description shall indicate that a more particular description of such real property is on file with and may be seen at the office of the registrar of probate. R.S., c.238. s.56.

Approval of mortgage under licence

58 Where the executor or administrator has obtained a licence for the mortgaging of real property, the terms and conditions of the mortgage shall be subject to the approval of the court, and a certificate of such approval shall be endorsed on the mortgage. R.S., c.238, s.57.

Postponement of sale

59 Where the executor or administrator, at the time appointed for the sale, deems it for the interest of all persons concerned therein that the selling, mortgaging or letting should be postponed, he may adjourn it for any time not exceeding thirty days, and shall give notice of the postponement by posting up notices thereof. R.S., c.238, s.58.

Filed affidavit as evidence

60 The affidavit of the executor or administrator, or other person authorized by the licence or by this Act, filed in the registry within one year after the date of selling, mortgaging or letting, shall be admitted as evidence of the time, place and manner of the advertisement and notices. R.S., c.238, s.59.

Execution and effect of instrument

61 All deeds, mortgages or leases made pursuant to the licence shall be executed by the person authorized in that behalf by the licence, and shall be as effectual as if executed by the deceased. R.S., c.238, s.60.

Execution of instrument on death of representative

62 If after the agreement for the selling, mortgaging or letting under the licence is made, and before the execution of the conveyance, the executor or administrator dies, the court may authorize an administrator, with the will annexed, or the executor of such deceased executor, or some other person to be named in the order, to execute such conveyance, and the same shall be as effectual as if it was executed by the deceased. R.S., c.238, s.61.

Registered conveyance as evidence

63 Every conveyance made under the preceding provisions of this Act, and registered in the registry of deeds for the registration district in which the real property lies, shall be taken as presumptive evidence that all the proceedings on which such conveyance is founded were rightly had. R.S., c. 238, s.62.

Private sale of real property to pay debts

64 (1) Notwithstanding any other provision of this Act, where the personal property of the deceased is insufficient for the payment of his debts and the legacies, or the costs and expenses incurred by the executor or administrator for the benefit of or in relation to the estate of the deceased, an executor or administrator may apply to the judge for an order to sell at private sale the whole or such part of the real property of the deceased as he deems necessary, and the judge may proceed in a summary manner on affidavits or upon notice to inquire into the merits of the application .

Order for private sale

(2) If it appears that a private sale of the whole or a part of the real property is in the best interest of the estate and of all persons concerned therein, the judge may make an order for a private sale of such real property in such manner and on such terms, and with such restrictions, as are deemed expedient.

Affidavits of value

(3) Every application by an executor or administrator for an order to sell real estate at private sale shall be accompanied by two affidavits from persons who are licensed real estate brokers or have special knowledge of real estate values as to the value of the real estate sought to be sold for the purpose of enabling the judge to fix the sale price.

Bond

(4) An executor or administrator before entering into a private sale shall first file a bond to Her Majesty, to be approved of by the judge, with such sureties and containing such terms and conditions as are directed, but in any event containing a condition for the fulfilment of the directions contained in such order.

Variation or rescission of order

(5) The judge may vary or rescind any previous order authorizing a private sale if no sale has been made under the order.

Entry and registration of order and use as evidence

(6) Every order granted under this Section shall be entered in the registrar's book, and a copy thereof duly certified by the judge or registrar shall be registered in the registry of deeds for the registration district in which the real property is situated, and such certified copy, or a copy thereof from the registry certified under the hand of the registrar of deeds, shall be evidence of such order in all courts without further proof.

Execution and effect of deed

(7) All deeds made pursuant to an order granted under this Section shall be executed by the executor or administrator authorized in that behalf by the order and shall be as effectual as if executed by the deceased. 1970, c.60,s. 1.

BAD DEBTS**Filing of affidavit of bad debts**

65 (1) An executor or administrator at any time after the lapse of six months from the grant of probate or letters of administration may file an affidavit in the registry of the court, with a schedule attached, of doubtful and desperate debts, containing the particulars of dates, names and amounts, and setting forth in such affidavit that such debts are, as he believes doubtful or desperate, and that he has been unable to collect the same.

Order to divide bad debts among persons entitled;

(2) Thereupon the court, on the application of the executor or administrator or any person interested in the estate, on its being shown to its satisfaction that it will be for the benefit of the estate, may make an order for the equitable division of such debts amongst the creditors, legatees, next of kin or other persons entitled, or may appoint one or more persons to make such division, and any such division shall be subject to confirmation by the court.

Order for sale of bad debts

(3) The court, instead of making such order, may make an order directing the sale of such debts, or any of them, either separately or en bloc, at public auction.

Notice of sale

(4) Notice of the sale and of the place at which a copy of such schedule of debts may be inspected shall be given by advertisement published for one month in a newspaper circulating in the probate district.

Recovery by assignee or purchaser

(5) The person to whom any debt is assigned on any such division, or the purchaser thereof at any such sale, shall have all the rights and remedies for the recovery in their own names of the debts so assigned or so purchased which the deceased in his lifetime, or such executor or administrator, possessed or had. R.S., c. 238, s. 63.

REPRESENTATIVE'S ACCOUNTS
AGAINST ESTATE

Claim by representative against estate

66 (1) When the executor or administrator is a creditor of the estate, he shall file in the office of the registrar, at least one month before the distribution of the estate, a true and correct account of his claim against the estate, with the dates and items thereof, and all credits to which the deceased was entitled.

Affidavit

(2) The account shall be verified by affidavit in Form S in the Schedule to this Act, or to the like effect. R.S., c. 238, s. 64.

CLAIMS AGAINST EXECUTORS

Claim by estate against executor

67 The naming of any person as executor in a will shall not operate as a discharge of any claim which the testator had against him, but such claim shall be included as part of the estate of the deceased in the inventory, and such executor shall be liable for the same as for so much money of

the estate in his hands at the time when such debt or demand is due, and shall apply and distribute the same as part of the personal property of the testator. R.S., c. 238,

PAYMENT OF CLAIMS AND DISTRIBUTION
BY THE REPRESENTATIVES

Payment of claims and distribution of estate

(68) Every executor or administrator, at the expiration of twelve months from the date of the probate or letters of administration, shall pay all such legal and just claims as have been exhibited, so far as the estate of the deceased in his hands will enable him, and shall make such distribution of the estate as is directed by the will of the deceased or by the statutes in that behalf. R.S.. c. 238 s. 66.

Expense of grave stone

69 The cost of a grave stone or monument, suitable to the rank or position in life of the deceased, and not disproportionate to the value of his estate, may be defrayed by the executor or administrator out of the assets of the deceased. R.S., c. 238, s. 67.

SETTLEMENT OF THE ESTATE

Application for citation for settlement of estate

70 (1) After the expiration of six months from the date of the probate or letters of administration, the executor or administrator may, and within eighteen months from such date shall, apply to the court for a citation for the settlement of the estate.

Service and content of citation

(2) The citation shall be addressed to and served upon the following persons:

- (a) the creditors or other persons who have sent in attested claims, but whose claims have not been paid;

- (b) the legatees whose legacies have not been paid, or the next of kin in case of intestacy;
- (c) any person interested in the estate, including, if the court directs, any co-executor, co-administrator, any surety on the administration bond or bond given in respect to a licence for selling, mortgaging or letting the real property,

and shall require them to appear before the court at a time and place specified in the citation to attend the adjudication of the claims of creditors or other persons, the taking of the accounts of the executor or administrator and the distribution of the estate according to law.

Administrator de bonis non

(3) An administrator de bonis non may at any time after his appointment apply to the court for a citation for the settlement of the estate, provided that in any such case at least twelve months have expired from the date of the first probate or letters of administration in such estate and further provided that the provisions of Section 43 as to advertising for claims of creditors have been complied with by a previous executor, executors, administrator or administrators, and in any case notice of the citation shall be published in the Royal Gazette for a period of at least thirty days before the date fixed for the settlement of the estate, or for such longer time as the court directs.

Failure to apply for citation within eighteen months

(4) If an executor or administrator does not, within eighteen months from the date of the probate or letters of administration, apply for a citation for the settlement of the estate, the court, on the application of any of the persons previously mentioned in this Section, may grant a citation requiring such executor or administrator to show cause why he should not apply for a citation for, and proceed to, the settlement of the estate within a time to be fixed by the court and the court upon the return of such citation may make such order as to it seems just.

Condition for costs against executor

(5) Costs of the proceedings of the citation against the executor or administrator in such case shall not be allowed against him, unless the person at whose instance

such citation was taken has first given such executor or administrator notice to settle the estate at least ten days before such proceedings were instituted. R.S., c. 238, s. 68.

Manner of service of citation

71 (1) Service may be made upon any of such persons mentioned in Section 70 in the following manner:

- (a) he may be served personally at least thirty days before the date fixed for the settlement of the estate;
- (b) a copy of the citation may be mailed to his address, prepaid and registered, at least thirty days before such date, unless the court directs a longer time; or
- (c) if he resides out of the Province, or if the residence or address of any such person is unknown, notice of the citation shall be published in the Royal Gazette for a period of at least thirty days before the date fixed for the settlement of the estate, or for such longer time as the court directs.

Affidavit of service

(2) Service may be effected by any literate person, and the affidavit of such person, stating when, where and how such service was effected, shall be filed in the registry and shall be sufficient evidence of such service. R.S., c. 238, s. 69.

Form of notice of citation in Royal Gazette

72 Where notice of the citation is published in the Royal Gazette pursuant to subsection (3) of Section 70 or subsection (1) of Section 71 it shall be published in such form or forms as the Attorney General prescribes. R.S., c. 238,

Filing of accounts of representative

73 Every executor or administrator shall, at least ten days before the time fixed in the citation, file in the

registry his accounts for inspection by any person interested in the estate. R.S., c. 238, s. 71.

Rights of interested person

74 (1) Any person interested in the estate may attend the settlement of the estate and may contest the same and any claim against the estate which has not been paid.

Supporting evidence of accounts of representative

(2) On the taking of his account every executor or administrator shall produce vouchers for all debts and legacies paid, and for all funeral and other expenses, and such executor or administrator may be examined on oath, and evidence may be taken touching any of the property or effects of the deceased which have come to his hands or knowledge, and the disposition thereof.

Expense allowed without voucher

(3) Any item of expenditure may be allowed without producing a voucher therefor if such expenditure is proved by sworn testimony, stating when and to whom the payment was made. R.S., c. 238, s. 72.

Auditing of accounts

75 The court may appoint one or more auditors to examine the accounts, and to make a report thereon under oath, which report shall be subject to confirmation, and may make a reasonable allowance to such auditors, to be paid out of the estate, or if it is a contested matter, to be paid as other costs. R.S., c. 238, s. 73.

Commission for representative

76 In the settlement of any estate the executors or administrators may be allowed over and above all such actual and necessary expenses, as appear just and reasonable, a commission not exceeding five per cent on the amount received by them, and the court further may apportion such commission among the executors or administrators as appears just and proper, according to the labour bestowed or responsibility incurred by them respectively. R.S., c. 238, s. 74.

Compensation provided by will for representative

77 When any provision is made by any will for specific compensation to an executor, the same shall be deemed a full satisfaction for his services in lieu of any commission, or his share thereof, unless such executor, within twelve months from the date of probate, by declaration under his hand filed with the registrar, renounces all claim to such specific compensation. R.S., c. 238, s. 75.

Powers of probate court

78 In the settlement of the accounts of executors or administrators, or in any matter pertaining thereto, the court shall have the same power which is enjoyed by the Supreme Court. R.S., c. 238, s. 76.

Final settlement is conclusive evidence

79 The allowance of the accounts, and the final settlement of the estate by the court of probate, or in case of an appeal by the court of appeal, shall be conclusive evidence against all creditors, legatees, next of kin of the deceased and all persons in any way interested in the estate upon whom the citation has been served, whether personally or by sending a copy by mail or by publication, as is provided in this Act, of the following facts:

- (a) that the items in such account for money paid to creditors, to legatees, to the next of kin and for necessary expenses, are correct;
 - (b) that such executor or administrator has been charged all the interest for money received by him and embraced in his account for which he was legally accountable;
 - (c) that the money stated in such account as collected was all that was collectable on the debts mentioned in such account at the time of the allowance thereof.
- R.S., c. 238, s. 77.

Citation for co-representative to settle accounts

80 The court may, at the instance of any executor or administrator, grant a citation against a co-executor or

co-administrator requiring him to proceed to the settlement of the accounts of the estate as between him and the executor or administrator at whose instance the citation was granted, and may make a decree thereon, or may direct the executors or administrators to take out a citation for, and proceed to, the settlement of the estate under the preceding provisions of this Act. R.S., c. 238, s. 78.

Citation for removed representative to settle accounts

81 The court may, at the instance of any administrator, grant a citation against any executor or administrator who has been removed, requiring him to settle the accounts of the estate, and may make such order thereon as to it seems just. R.S., c. 238, s. 79.

DISTRIBUTION BY THE COURT

Surplus assets

82 The court may order the surplus assets remaining after the settlement of the account of an executor or administrator to be distributed among the persons entitled thereto. R.S., c. 238, s. 80.

Determination as to persons entitled to surplus

83 If there is a contest the court shall hear evidence and determine who are the persons properly entitled to participate in such surplus assets, and the shares which they are respectively entitled to receive. R.S., c. 238, s. 81.

Deduction of debt from share of estate

84 (1) The share of each person interested in the estate shall be subject to the payment of any debt due by such person to the deceased, and where the share of such person in the personal estate is not sufficient for the payment of such debt, then such debt, or the balance thereof after deducting the value of such person's share in the personal estate of the deceased, shall be deducted from such person's share in the real estate of the deceased, and be taken into account in making a division of such real estate, or the proceeds thereof, and such charge for such debt shall take priority over all judgments, mortgages, conveyances of,

and other charges and incumbrances upon, such share, whether created by or against such person before or after the death of the deceased.

Powers of court respecting debt

(2) The court may try and determine the validity and amount of such debt, and direct such proceedings to be taken as are necessary to enable it to ascertain the amount thereof, upon the evidence brought before it, and may make all decrees and orders necessary or proper to carry into effect and enforce subsection (1). R.S., c. 238, s. 82.

Remedy or liability unaffected

85 Nothing contained in Section 84 shall prejudice any remedy that an executor or administrator has for the recovery of a debt such as is therein mentioned, nor affect the liability of an heir, devisee, legatee or next of kin for the excess of his indebtedness over the amount of his share in the estate to which he is indebted. R.S., c. 238, s. 83.

PARTITION OF LANDS

Partition of lands or sale and division of proceeds

86 The court, upon application of any person interested, may order the real property of the testator or intestate, wherever situated in the Province, to be divided, or subject to this Act to be sold, and the proceeds divided among the persons by law entitled thereto, that is to say, if it is devised, according to the terms and conditions of the will, and if not devised, then according to the provision; of the statutes in that behalf. R.S., c. 238, s. 84.

Rights and liabilities of purchaser

87 Whenever the share or interest of any such person so entitled has been transferred, the purchaser shall have the same rights and be subject to the same liabilities as the person whose share he represents. R.S.. c. 238 s. 85.

Notice of application for partition

88 If the application for partition is made at any sitting of the court for the settlement of the estate, notice of

such application shall not be necessary, but the court may adjourn to enable notice to be given to any purchaser of a share or interest, or such other notice to be given to any person interested, as it directs. R.S., c. 238, s. 86.

Appointment of guardian for infant

89 In any of the proceedings taken to effect the distribution or the disposal of the real property, guardians for such of the parties as are infants shall be appointed when necessary, and such guardians shall effectually represent such infants. R.S., c. 238, s. 87.

Commissioners for partition

90 (1) The court on application for partition may appoint three disinterested freeholders as commissioners to make partition of the real property, and if a division of the whole or any particular portion cannot be made without prejudice to the estate, or such portion, to place a value or values on the same, and may adjourn to any fixed time to enable such commissioners to make their report to the court.

Oath

(2) The commissioners, before entering upon their duties, shall take an oath for the faithful and impartial performance of such duties, and the oath shall be forthwith filed in the registry. R.S., c. 238, s. 88.

Notice to interested person

91 Notice of the time and place appointed for making such partition or valuation by the commissioners shall be given to the persons interested. R.S., c. 238, s. 89.

Rights of widow

92 If there is a claim by the widow for dower, or to any individual share or right devised by will, the same may be assigned and set off to her. R.S., c. 238, s. 90.

Duty to divide property

93 The commissioners shall, if it can be done without prejudice to the estate, divide the real property among the

persons entitled thereto, and cause the share of each one to be assigned to him, but the shares of two or more of such persons may be allotted to them in common, upon their expressing their consent to that effect in writing, addressed to the commissioners. R.S., c.238, s.91.

Rights of children on partition

94 Where the real property is divisible among the children of a testator or intestate, and such division, or the division of any particular portion thereof, cannot be made without prejudice to the whole estate or such portion, the court may offer the whole, or after the division of the residue, the whole of such particular portion, to the eldest child and on his refusal to the other children successively, in the order of their ages, such child paying to the other children their shares of the value of such estate, or giving satisfactory security for the payment thereof with six per cent interest thereon. R.S., c. 238, s.92; 1978, c.42, s.13.

Rights of widow or next of kin on partition

95 Where the real property of a testator or intestate is divisible amongst the next of kin, being collateral heirs, or the surviving spouse and such next of kin, or the surviving spouse and devisees, and such division or the division of any particular portion thereof cannot be made without prejudice to the whole property or such portion, the court may offer the whole, or after the division of the residue, the whole of a particular portion, to the surviving spouse, if any, and if there is no surviving spouse, or if the surviving spouse refuses to accept the same, then to the eldest of the heirs or devisees, and on his refusal to the other heirs or devisees successively, in the order of their ages, the person accepting such offer paying to, as the case may be, the surviving spouse and the other heirs or devisees their shares of the value of such estate, or giving satisfactory security for the payment thereof, with six per cent interest thereon. R.S., c.238, s.93; 1978, c.42, s. 14.

Real property subject to dower

96 If under Sections 94 and 95 the property is divided subject to dower, the amount to be paid or tendered, or the security to be given, shall be two thirds of the value of

each share at the time the property was accepted, and satisfactory security shall be given for the payment of the remainder on the decease of the widow. R.S., c.238, s.94.

Disability or absence or whereabouts unknown

97 (1) If any of the persons interested is an infant, or person of unsound mind, or a person who resides out of the Province, or whose whereabouts is unknown, or it is unknown whether he is dead or alive, it shall not be necessary to offer the whole or a portion of the real property to such person, and the amount to be paid, or secured or tendered to such person under this Act shall be paid, secured or tendered to the guardian, if any, of such person interested who is an infant or person of unsound mind, and if no such guardian has been appointed, then to the executors or administrators of the estate, and where the whereabouts of any such person interested is unknown, or it is not known whether he is alive or dead, to such executors or administrators.

Deposit of moneys for persons in subsection (1)

(2) If money is paid to an executor or administrator under this Section he shall deposit the same at interest in the Dominion Government Savings Bank, or other chartered bank or banks in Canada, until such guardians are duly appointed for such infant or person of unsound mind, or until such infant becomes of age, or until such person becomes of sound mind, or until it is definitely ascertained that such person whose whereabouts is unknown is alive or dead, or a bond is given under this Act in respect to the distribution of unclaimed property. R.S., c.238, s.95.

Affidavit respecting relative ages

98 The relative ages of the persons interested for the purpose of making offers of the real property under the preceding provisions may be ascertained by the affidavit of the applicant for the partition, or other competent person, stating the facts according to his information and belief. R.S., c.238, s.96.

Report of commissioners

99 (1) The report of the commissioners shall be valid if two at least of the commissioners concur therein.

Confirmation of report

(2) The report of the commissioners shall be subject to confirmation by the court.

Notice to interested person

(3) The persons interested shall have eight days notice of the time and place appointed to consider the same.

Substituted service

(4) If any of the persons interested is absent from the Province, or cannot be personally served, publication of the notice in the Royal Gazette for at least four weeks next preceding the day named shall be sufficient service of the notice.

Decision of court and award of costs

(5) The court may confirm, vary or set aside the report, or make such amendments thereof as it deems right, and shall award the costs of the partition or valuation and apportion the same among the persons interested in such manner as it deems just.

Plan of surveyor and filing

(6) The court may order a plan of any division to be prepared by a surveyor, to be filed in the registry. R.S., c.238, s.97.

Order to vest property in interested person

100 If any of the persons interested accepts the whole or any particular portion of the real property, the court, on being satisfied by affidavit or otherwise that such person or any person entitled as heir-at-law, transferee or assignee of such person so accepting, or as the transferee or assignee of such heir-at-law, or otherwise entitled, or found to the satisfaction of the court, on affidavit, to be entitled to represent such person, so accepting, in respect to such real property so accepted, or in respect to the order by this Section provided for, has paid to each of the other persons interested the amount coming to him as the value of his share of such real property, or has given satisfactory security

for the payment thereof to him, with interest, as provided, or has tendered the same to him, and such person has refused the same, may make an order vesting the real property in such person so accepting the same, or in such person so entitled, or found to be entitled, and the order shall have the same effect as if the several persons interested had duly executed a conveyance of their interests in the said real property to such person, and shall be registered in the registry of deeds for the registration district in which such real property lies. R.S., c.238, s.98.

Order for sale of property

101 If all of the persons interested refuse to accept the whole or any particular portion of the real property, or are infants, or of unsound mind, or do not reside within the Province, it shall be competent for the court to order a sale thereof, to be made in such manner as it directs. R.S., c.238, s. 99.

Sale if partition creates disproportionate expense

102 (1) Where the real property of a testator or intestate is distributable among several devisees or next of kin, or surviving spouse and devisees or next of kin, and no share to which any such surviving spouse, devisee or next of kin is entitled exceeds in value the sum of one hundred dollars, so that partition of the same among such persons cannot be conveniently made without incurring disproportionate expense, the executor or administrator, upon the request of any of such persons, may, without application for partition, and without citation, obtain leave from the court of probate to sell such real property at public auction at a price not less than a sum to be fixed by the court, and to execute a deed of the same to the purchaser.

Low bid

(2) If such real property realizes at the sale a sum equal to or greater than the sum so fixed by the court, the sale shall stand confirmed, otherwise the court may order the same to be again offered for sale at a price to be again fixed by the court, and in case of its not realizing such price~ may require that an application shall be made for a confirmation of the sale after notice to the persons entitled. R.S., c.238, s.100; 1978, c.42, s.1.

Management of sale and execution of deed

103 (1) Where the court orders a sale of real property pursuant to this Act, the executor or administrator, or such other person as the court appoints in that behalf, may manage and conduct the sale, receive the purchase money and execute all necessary deeds conveying the real property to the purchaser or purchasers thereof, and it shall not be necessary for the several heirs or persons interested to join in such deeds or to be made parties thereto, but the same shall be taken as presumptive evidence of this Act having been complied with and shall be sufficient to convey all the estate and interest of the testator or intestate in the property at the time of his death.

Advertisement of sale

(2) Every such sale shall be advertised by handbills in the county in which the property lies, and in one newspaper, if any, published in the said county, for at least thirty days.

Disposition of proceeds of sale

(3) Such executor or administrator, or other person, shall divide the purchase money among the persons entitled thereto, subject to an annual allowance for life to any widow as compensation for dower, to be settled by the court, and if any of such persons is a minor or a person of unsound mind, shall pay his share to his guardian, and until such guardian is appointed, or such minor becomes of age, shall deposit the same at interest in the Dominion Government Savings Bank, or other chartered bank or banks in Canada, and if the whereabouts of any of such persons entitled is unknown, or it is not known whether he is alive or dead, his share shall be deposited at interest in the Dominion Government Savings Bank, or other chartered bank or banks in Canada, until it is known for a certainty that he is alive or dead, or a bond is given under the provisions of this Act in respect to the distribution of unclaimed property. R.S., c.238, s.101.

Registration

104 (1) When a division or valuation has been confirmed the registrar shall deposit with the registrar of deeds for every registration district in which any of the real property is situated, a copy of such division or valuation,

with the plans and description of the same, duly certified under his hand.

Duty of registrar of deeds and fees

(2) The registrar of deeds shall register the same, and the expense of so doing shall be a charge against the estate, to be taxed for and to be collected by the registrar of probate.

Title not defeated

(3) The non-performance of the duty hereby imposed shall not operate to defeat any title under any such division. R.S.. c.238, s. 102.

INSOLVENT ESTATES

Order declaring estate insolvent

105 (1) The court, in its discretion, upon the application of the executor or administrator, supported by his affidavit that he believes the estate is insolvent, may make an order declaring the estate to be insolvent.

Stay of proceedings against estate

(2) The executor or administrator may, in any legal proceedings instituted in any court against such executor or administrator for any cause of action accruing against the deceased, apply to such court, or to a judge thereof, to stay proceedings on the production of a copy of such order, and such court, or a judge, may, from time to time make such order for a stay of proceedings, or such other order or orders as justice requires, the costs to be in the discretion of the court or judge. R.S., c.238, s. 103.

Distribution of insolvent estate

106 In the settlement and distribution of the insolvent estate of any deceased person the whole of the real and personal property remaining, after payment of the charges and expenses of the necessary medical and other attendance on the deceased during his last illness, and of his funeral and gravestone, and the expenses attendant on the settlement of the estate, shall be distributed among those creditors who have rendered their accounts, duly attested, in the following manner:

- (a) the wages of clerks, domestic and farm servants, and rent, shall be paid in full for not more than one year next preceding the death and any excess shall be on the same footing as other claims;
- (b) all other creditors shall be paid in proportion to the amount of their respective claims. R.S., c.238,s. 104.

Debts and rights unaffected

107 (1) Nothing in Section 106 shall affect

- (a) any debt secured by mortgage of real or personal property, or by a judgment which was registered in the lifetime of the deceased, so as to bind his real property;
- (b) the dower of any widow; or
- (c) the right of any creditor who has not exhibited an attested account to recover his claim to such amount as remains in the hands of the executor or administrator for distribution after the settlement of the estate

Claim of mortgagee or judgment creditor

(2) Any such mortgagee or judgment creditor may claim as any other creditor for any balance due to him after realizing the value of such real or personal property. R.S., c.238, s.105.

PRACTICE**Issue and return of process**

108 The registrar shall issue all citations in Form W in the Schedule to this Act, and other process necessary for the purposes of the court, and where no return day or period of service is prescribed, the registrar may in each case fix the same. R.S., c.238, s.106.

Subpoenas

109 (1) The registrar shall issue subpoenas in Form X in the Schedule to this Act to compel the attendance of witnesses and the production of papers material to any inquiry pending before the court.

Subpoena of more than one witness

(2) Every subpoena may include the names of any number of witnesses. R.S., c.238, s.107.

Sealing of court document

110 Orders and decrees of the court shall be sealed by the registrar. R.S., c.238, s. 108.

Duties of sheriff

111 Executions, attachments and other compulsory process against a party shall be directed to and executed by a sheriff. R.S., c.238, s. 109.

Service of document

112 Where no other mode of service is prescribed, service within the Province of a citation, notice, order, decree or other document on any person may be made by mailing the same, prepaid and registered, to the address of such person. R.S., c.238, s.110.

Substituted service

113 (1) Where, owing to absence from the Province, or other cause, prompt personal service on any person of any citation, notice, order, decree or other document cannot be effected, the court, on being satisfied by affidavit of the fact may make such order for substituted or other service, by mailing the same to the address of such person, or by public advertisement, or otherwise, as is just.

Use of abstract where advertisement required

(2) If public advertisement is directed, an abstract of the document, settled and signed by the registrar, may be published instead of the document. R.S., c.238, s. 111.

Failure to attend

114 If a person cited or notified does not attend, the matter may be proceeded with notwithstanding such default. R.S., c.238, s. 112.

Solicitor or counsel unnecessary

115 (1) It shall not be necessary for a party to employ a solicitor or counsel to act for him in a court of probate, and he may prepare and file any papers for himself, and may appear in person and conduct his own cause in such court.

Address for service

(2) Every such party shall, with the entry of appearance, leave with the registrar an address within the Province for service upon him of any proceeding in the matter. R.S., c.238, s.113.

Entry of appearance

116 (1) The registrar shall enter every appearance, setting forth the interest which the person on whose behalf it is entered has in the estate of the deceased.

Change of solicitor

(2) If a person changes his solicitor, the name of the new solicitor shall be substituted by the registrar for that of the former solicitor.

Service on solicitor

(3) Service of any proceeding upon the solicitor of a person entered by the registrar shall be considered in all respects as service upon such person. R.S., c.238, s.114.

Guardian ad litem

117 Where it appears that a minor is interested in any matter pending before the court, a guardian ad litem for such minor may be appointed by the court, at its discretion, with or without notice of the application in Form Y in the Schedule to this Act. R.S. c.238 s.115.

Contempt of court by witness

118 (1) Upon failure of a witness to appear before the court pursuant to a subpoena, or upon refusal of a witness to testify before the court when required so to do, the court may proceed by attachment and punish such witness for contempt, as in cases in the Supreme Court.

Form for attachment

(2) The attachment may be in Form Z in the Schedule to this Act, or to the like effect. R.S., c.238, s.116.

Enforcement of order of court

119 (1) Every order or decree of a court of probate may be enforced against the body of any person who disobeys the same by commitment for contempt.

Service of order

(2) Such order or decree, or a copy thereof, certified by the registrar, shall be personally served upon such person a reasonable time before the application for commitment is made

Application and notice for commitment

(3) Every application for commitment shall be made upon affidavit, and notice directed to such person, requiring him to show cause why he should not be committed to prison for his contempt for such term as the court orders, not exceeding six months.

Form and service of notice

(4) The notice may be in Form AA in the Schedule to this Act, or to the like effect, and shall be personally served not less than ten days before the return thereof.

Order for commitment

(5) Upon the day fixed in the notice the court shall hear all parties appearing, and upon proof, by affidavit or otherwise, that the order or decree, or a certified copy thereof, has been duly served upon such person, and that he has failed to obey such order or decree, and if no sufficient excuse for such failure is shown, the court may, by order addressed to a sheriff, commit the defendant to the common jail of any county for any term not exceeding six months, and

the commitment may be in Form AB in the Schedule to this Act. or to the like effect.

Application for order for discharge

(6) Such person may at any time upon application to the court, and upon purging his contempt, and upon payment of such costs occasioned by the proceedings against him for contempt as the court orders, be entitled, if he is in custody upon such commitment, to an order for his discharge therefrom, or if not in custody, to have the execution of the order for commitment stayed. R.S.. c. 238, s. 117.

Examination of witness

120 In any contested matter witnesses may be examined orally in open court, and notes of their testimony shall be taken in writing and the notes filed in the registry. R.S., c.238, s.118.

Appointment and costs of interpreter

121 If it is necessary to appoint an interpreter to interpret in open court, or to translate or decipher any document, the court may, in its discretion, employ such interpreter and make a reasonable allowance for his services, to be paid to him in the first instance by the party who requires the services of the interpreter and ultimately to be borne by the party against whom the costs are awarded. R.S., c. 238, s. 119.

Reservation and filing of judgment

122 In any matter heard before it the court may reserve judgment, but such judgment in writing shall be filed in the registry within sixty days after such reservation, or such further time as the parties consent to in writing. R.S., c.238, s. 120.

Execution

123 (1) Execution may be issued upon any decree or order for the payment by one person to another of any sum of money or costs.

Form of execution

(2) Such execution may be in Form AC in the Schedule to this Act, or to the like effect. R.S., c.238, s.121.

Order to pay moneys of estate into bank

124 The court may, on summary application, if it thinks it for the interest of the estate so to do, order any money in the hands of an executor or administrator to be paid into any savings bank or any chartered bank in this Province to the credit of the estate, and when money is so paid such bank shall not permit the same to be withdrawn without the order of the court. R.S., c.238, s. 122.

Administration of oath in proof of will

125 (1) Every oath in proof of a will offered for probate shall be administered by and taken before the judge or registrar of the court.

Administration of oath by authorized person

(2) Any oath required by this Act to be taken before a judge or registrar, may, where the person to take the oath lives out of the Province or more than twenty miles distant from the registry, or is by reason of age or illness unable to appear before such judge or registrar, be taken in writing before any person duly authorized by such judge or registrar.

Oath administered by authorized person

(3) The person so authorized shall have power to administer the oath, and such oath shall have the same effect as if taken before the judge or registrar.

Affidavits and other oath

(4) All other oaths and all affidavits to be used in the court of probate and all other oaths and all affidavits authorized or directed to be made or taken by this Act may be sworn before the judge or registrar, or before a notary public, a commissioner of the Supreme Court, a justice of the peace or a barrister of the Supreme Court. R.S., c.238, s.123.

Justification by sureties

126 Before granting letters of administration, or a licence to sell, mortgage or lease any real property, the court may require the sureties on the bond to justify in Form AD in the Schedule to this Act in such reasonable sum as it deems fit, having regard to the value of the property. R.S., c.238, s. 124.

Official acts and orders to be written

127 All official acts and orders shall be reduced to writing. R.S., c.238, s.125.

Rules of practice and evidence

128 In cases in which no provision is made in this Act, or in rules made under it, in respect to practice or evidence, and so far as the provisions of this Act or of such rules do not extend, the rules of practice and the rules of evidence prevailing in the Supreme Court, including those relating to the examination of witnesses de bene esse, or under commission, shall prevail in the court of probate. R.S., c.238, s. 126.

COSTS AND FEES**Costs and Fees Act**

129 The solicitors, counsel and other officers of the court of probate, shall respectively be entitled to take for the performance of duties and services under this Act, the appropriate fees mentioned in the Costs and Fees Act as therein prescribed. R.S.. c.238. s.127.

Valuation of estate for purpose of fees

130 (1) The value of an estate in reference to the fees payable thereon shall be ascertained in the first instance by the affidavit of the executor or administrator, stating his belief of the value thereof, to be controlled eventually by the value subsequently proved.

Valuation of real property

(2) In the valuation of real property its value over and above all mortgages and encumbrances thereon shall be taken. R.S., c.238, s. 128.

Order for costs

131 (1) In any contested matter the court may, in its discretion, order the costs of and incident thereto to be paid by the party against whom the decision is given, and if such party is an executor or administrator, to be paid out of his own pocket or out of the estate of the deceased, as is just and proper.

Appeal from order for costs

(2) Every such order may be reviewed by the Appeal Division of the Supreme Court, or by any judge thereof at chambers, upon notice given by the party aggrieved to the opposite party, and such order may be made thereon as to the Appeal Division of the Supreme Court or judge seems just and proper. R.S., c.238, s.129; 1972, c.2, s.8.

FORMS

Forms

132 The forms contained in the Schedule to this Act or any form to the like effect, when applicable, may be used for the purposes of this Act, and shall be sufficient therefor. R.S., c. 238, s. 130.

RULES OF COURT

Rules of court

133 The judges of the Supreme Court shall have the same authority to make rules of court for the court of probate in respect to procedure, practice and other matters, as they have with respect to rules for the Supreme Court, and may prescribe forms for carrying into effect the provisions of this Act. R.S., c.238, s. 131.

APPEALS TO SUPREME COURT

Appeals to Supreme Court

134 (1) Any party aggrieved by any order, decree or decision of a judge, may appeal therefrom to the Appeal Division of the Supreme Court, which Court shall have power to confirm, vary or reverse the same.

Filing of notice of appeal and bond

(2) The appellant shall, within thirty days from the making of the order, decree or decision, file in the registry of the court of probate a notice containing the grounds of appeal and shall also, within ten days after the filing of such notice, or within such further time as the Appeal Division of the Supreme Court or any judge thereof shall under special circumstances allow file a bond in Form AE in the Schedule to this Act to the registrar, with two sureties to be approved by him, in the penal sum of two hundred and forty dollars, conditioned for the payment of such costs as are awarded against him upon such appeal.

Stay of proceeding pending appeal

(3) Such appeal, when so perfected, shall operate as a stay of proceedings in the matter in the court of probate. R.S., c.238, s. 132; 1972, c. 2, s.8.

Transmission of documents

135 (1) In case of appeal to the Appeal Division of the Supreme Court, such Court, or any judge thereof at chambers, may order the registrar to transmit to the Registrar of the Appeal Division of the Supreme Court all such original papers, documents and minutes of evidence filed in the court of probate as are required for the purposes of the appeal, and also a copy of any will, unless the original will itself is required for inspection in the Appeal Division of the Supreme Court.

Duty of registrar

(2) The original papers and copy shall be certified under the hand of the registrar, and shall be transmitted by him as directed upon being paid the fees for copying and certifying the same.

Contempt by registrar

(3) If the registrar, upon being tendered such fees, fails to comply with such order, the Appeal Division of the Supreme Court, on due proof thereof, may proceed to enforce the order by attachment as for a contempt. R.S., c.238, s. 133; 1972, c.2, s.8.

Amendment of minutes of evidence

136 The judge, or the registrar respectively, upon application made to him therefor, supported by affidavit may amend his minutes of evidence taken in any matter heard or adjudicated before him. R.S., c.238, s.134.

Matter remitted to probate court

137 The Appeal Division of the Supreme Court may remit the matter to the court of probate for a further investigation of facts or more perfect consideration, with such instructions, and upon such terms, as are deemed advisable. R.S..c.238.s.13~; 1972,c.2,s.8.

Contested question of fact

138 The Appeal Division of the Supreme Court, when any contested question of fact arises, may, if it thinks fit, order an issue to be made up, and prescribe the manner of making the same, and may designate the county in which the same shall be tried, and shall have power to grant new trials thereof, and to order by whom and in what manner the costs attending the determination of the issue shall be paid. R.S., c.238, s. 136; 1972, c.2, s.8.

Costs of appeal

139 (1) The Appeal Division of the Supreme Court may, in its discretion, order the costs of any appeal to be paid by the party who fails on such appeal, or out of the estate, or may refuse costs.

Enforcement of payment of costs

(2) The payment of costs may be enforced against an appellant by an execution or an action on the appeal bond, and against other parties by an execution. R.S., c.238, s.137; 1972, c.2, s.8.

Extension of appeal period

140 The Appeal Division of the Supreme Court, or any judge thereof at chambers, upon special cause shown at any time within six months after the time limited for filing notice of appeal, may allow a notice of appeal to be filed in the court of probate upon such terms as seem just, in which

case the same proceedings shall be had as when a notice of appeal is filed in other cases. R.S., c.238, s.138; 1972, c.2,

Writ of certiorari

141 No order for certiorari shall be granted, issued or allowed to remove any order, decree, decision, judgment, report, award or other proceeding had or made by or before any judge, registrar, commissioner or other officer of the probate court unless such order for certiorari be applied for within six calendar months next after such order, decree, decision, judgment, report, award or other proceeding shall be had or made. R.S., c.238, s.139.

GENERAL PROVISIONS**Restriction on removal of original will from registry**

142 No original will shall be removed from the registry but for the purpose of being produced in the Supreme Court for inspection, and in such case security shall be taken for its safe custody and return. R.S., c.238, s. 140.

Registration of original will

143 In the book for registration of wills all original wills shall be registered, and all interlineations, alterations or apparent erasures not noticed in the attestation shall be noted at the foot of the registry, so as to be as nearly as possible an exact and literal transcript of the original. R.S., c.238, s.141.

Registration of certified copy of will

144 (1) The registrar shall, as soon as an original will is proved in the registry, make an exact and literal copy thereof, and shall certify such copy under his hand, and cause the same to be registered by the registrar of deeds in each registration district in which any land of the testator devised thereby is situated.

Registration of copy of application for administration

(2) Where any land devolves on an intestacy the registrar shall, as soon as an application for adminis

tration is filed in the registry, certify a true copy thereof and cause the copy to be registered in each registration district in which any land of the intestate appears to be situate. R.S., c.238, s. 142.

Action against executor who does not act

145 (1) Any executor, knowing of his being named as such, and neglecting, without sufficient reason, to cause the will to be proved and recorded in the court of probate of the proper district, or to present such will and declare his refusal of the executorship, shall, for every month after the first month, be liable to a penalty of twenty dollars, which may be recovered to his own use by any person having an interest in the estate of the deceased in an action as for a private debt.

Limitation period

(2) No action shall be brought to recover the amount of such penalty from any such executor but within two years from the time that the fact of his being so named as executor came to his notice. R.S., c.238, s.143.

Bonds made to registrar

146 (1) Administration bonds, bonds given in connection with the sale of real property, bonds given in respect to unclaimed property and appeal bonds shall be made to the registrar of probate.

Enforcement of bond

(2) Any of such bonds given before the thirtieth day of March, 1900, whether to a judge or registrar, may be enforced by action in the name of the registrar of probate for the time being. R.S., c. 238, s.144.

Breach of condition of bond

147 Any judge or registrar on application made on petition, or in a summary way, and on being satisfied that the condition of any such bond, whether given to a judge or registrar, or whether given before, on or after the first day of February, 1901, has been broken, may make an order assigning such bond to some person to be named in the order, and such person, his executors or administrators shall

thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the judge or the registrar of the court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect to any breach of the conditions of the bond. R.S., c. 238, s. 145.

Person entitled but unheard of for ten years

148 Whenever it is made to appear by the affidavit of two credible persons, on an application to the court of the district in which the estate is being administered, that any person who, if living, would be entitled to any money or lands of the estate has been absent from the Province, and has not been heard of for a period of ten years or upwards next preceding the application, and that such person is believed to be dead, the court may order the executor or administrator of such estate to distribute such moneys or lands among such persons as would be legally entitled thereto if the death of such absent person had taken place immediately preceding the time at which the application is made. R.S., c.238, s. 146.

Bond

149 (1) Before such money or lands are distributed as aforesaid, there shall be filed in the registry a bond, or bonds, to the registrar, to be approved of by the registrar, in double the amount of such money, or double the value of such lands, conditioned for the payment or re-delivery of the said money or lands to the said absent person if he returns, or in case of his death being proved to have taken place at a time other than that immediately preceding the application, then to the persons entitled to the same by reason of the death having taken place at such other time.

Remedy unaffected and representative not liable

(2) Nothing herein contained shall limit or abridge the remedies which the absent person, or any other person entitled thereto, may resort to for recovering such money or lands of or from the persons among whom the executor or administrator has distributed the same, but the executor or administrator making such payment or distribution shall be relieved from all further liability in respect to such money or lands. R.S., c.238, s. 147.

Preservation and safe-keeping of records of registry

150 (1) The municipal council shall make provision for a fire-proof safe or vault, in the probate district, for the preservation of records, books, indexes and papers belonging to the registry, and shall make provision for keeping such records, books, indexes and papers in safe custody, and in good and efficient condition.

Amercement

(2) If the municipal council fails to make any such provision, the Trial Division of the Supreme Court, on the application of any ratepayer, shall amerce the municipal district for such sum as appears upon affidavit to be necessary for the purposes of this Section, which sum shall be rated upon the ratepayers, collected and paid to the municipal treasurer, and accounted for as other rates. R.S., c.238, s. 148: 1972 c.2. s.9.

Conflict of interest

151 No judge or registrar, or business or professional partner of any judge or registrar, shall be directly or indirectly employed, or professionally concerned, as counsel, solicitor, agent or in any other capacity, for any party or estate in any matter pending, or to be brought, in the court of which he is judge or registrar, under a penalty of five hundred dollars for each offence. R.S., c.238, s. 149.

**JUDICIAL FUNCTIONS OF
JUDGE AND REGISTRAR****Discharge of duties of office of probate judge**

152 The duties of the office of judge of the court of probate shall be discharged by the judge of the county court for the county court district in which the probate district is situated, and by the registrar of the court of probate for such district. R.S., c.238, s. 150.

Jurisdiction of judge of county court

153 (1) The following citations and applications under this Act shall be heard and disposed of by the judge of the county court for the county court district in which the

probate district is situated as judge of the court of probate, that is to say:

- (a) every citation or application to compel an executor to give security for the performance of his duty, or to remove an executor and to appoint an administrator in his place, or to remove an administrator and to appoint another in the place of the one removed;
- (b) every citation requiring the attendance of the persons interested to have a will proved in solemn form of law, and the validity of such will determined;
- (c) every citation requiring the attendance of the persons interested to have it determined whether a licence applied for or granted to sell, mortgage or lease real property for the payment of claims should be refused or revoked.

Jurisdiction of judge of county court and registrar

(2) Any citation for the adjudication of the claims of creditors and others, the allowance of the accounts of the executor or administrator, the distribution of the estate among the persons entitled and the partitioning and sale of the real property, shall be heard and disposed of by the judge, or by the registrar, at the option of the person applying for such citation at the time of making such application, and such citation shall be made returnable accordingly, but such judge or registrar may transfer to the other of them for hearing and disposal such citation, or any of the matters involved therein or connected therewith.

Jurisdiction of registrar

(3) All other citations, applications, contestations, matters and business shall be heard and disposed of by the registrar.

Jurisdiction by consent of parties

(4) Any citation, application, contestation or matter may, by consent in writing of the parties interested or their solicitors, be transferred from the registrar to the judge, or from the judge to the registrar, for hearing and disposal, notwithstanding this Section.

Powers and functions of judge or registrar

(5) In respect to the citations, applications, contestations, matters and business, and the hearing and disposal thereof, assigned to such judge or registrar, or made returnable before or transferred to either of them pursuant to this Section, and in respect to everything necessary for their complete determination and the enforcement thereof, such judge or registrar shall respectively exercise the powers and functions of the court of probate conferred on such court by this Act.

Duty of judge to hear appeal from registrar

(6) The judge of the county court shall hear and dispose of appeals taken to him from the decree, order or decision of the registrar. R.S., c. 238, s. 151.

Sittings in probate district at any time or place

154 (1) The judge, for the disposal of any business assigned or transferred to him under Section 153 may, at any time or place within the probate district, hold a sittings of the court of probate.

Regular sittings of court

(2) In order that certain stated times may be fixed he shall, whenever such business requires it, hold a sittings of the court of probate

- (a) on the day on which he holds his regular county court chambers in the probate district in which he resides; and
- (b) on the first day of the sittings of the county court of which he is judge, held by him in any other probate district situated within the county court district of such judge.

Sittings in probate district where judge not resident

(3) Any person interested in any business pending in the court of probate requiring to be heard or disposed of by the judge in a place in which he does not reside, may deposit the sum of twenty dollars with the registrar of the probate district, and such judge may thereupon hold a sittings of the court in such probate district.

Disposition of deposit

(4) The judge may take from such sum of twenty dollars a reasonable sum to defray his personal expenses at such sittings, and the sum remaining shall be returned by the registrar to the person depositing the same.

Expenses of judge are taxable costs

(5) If the matter is a contested matter such expenses shall be costs to be allowed and taxed in the matter unless the judge otherwise orders. R.S., c.238, s. 152.

Validity and appeal of grants and judicial acts

155 All grants, orders, decrees and judicial acts of the judge of a county court, ex officio judge of the court of probate or of the registrar, made or done under this Act, shall be deemed and be taken to be respectively as the nature of the case requires, grants, orders and judicial acts of the court of probate, and shall have force and validity, and be executed accordingly, subject, nevertheless, to be varied, reversed, discharged or amended upon appeal. R.S., c. 238, s. 153.

Before whom citation or notice returnable

156 (1) Every citation and notice of an application returnable before, or to be heard or brought on before the judge presiding in the court of probate, shall be marked accordingly, otherwise it shall be deemed to be a citation or application returnable before, or to be heard or brought on before, the registrar presiding in the court.

Marking of order or decree

(2) Every order or decree of the court, if granted by the judge, shall be marked accordingly, if granted by the registrar, it shall not be necessary to indicate by whom it was granted. R.S., c.238, s. 154.

Taxation of bill of costs

157 All bills of costs may be taxed by the registrar, and every such taxation may be reviewed by the judge, upon notice given by the party aggrieved to the opposite party, or given to the registrar in a case in which his fees are objected to. R.S., c.238, s. 155.

Appointment of acting judge

158 (1) Where a judge is required to preside in court or to exercise any judicial functions in any matter in the court, and is

- (a) ill or he either is or is about to be temporarily absent from the Province, or is a witness in such matter, or is otherwise incapacitated; or
- (b) is disqualified through interest in the matter as executor, administrator, heir, next of kin, legatee or creditor, or by reason of relationship to any of such persons, or through having previously been engaged as solicitor or counsel,

the Governor in Council may appoint a suitable person to preside and act in the place of and for and on behalf of the judge so incapacitated or disqualified and the person so appointed during such illness or temporary absence, or for the disposal of the matter in which the judge is a witness, or is incapacitated, or is so disqualified, shall exercise the functions and have all the powers of the judge in whose place he is appointed to preside and act.

Registrar may act

(2) Until or unless such appointment is made, the registrar may preside and act in the place of and for and on behalf of the judge so incapacitated or disqualified. R.S., c.238, s.156.

Adjournment of hearing

159 In any of the following cases:

- (a) if a judge is prevented from arriving at the place appointed for hearing or disposing of any matter in the court;
- (b) if a judge is found to be incapacitated or disqualified; or

- (c) if the registrar transfers, or the parties agree to transfer, any matter to the judge for hearing or disposing of the same,

the registrar may, from time to time, adjourn the hearing of such matter to enable it to be heard and disposed of by the judge or person appointed to act in the place of the judge. R.S., c.238, s.157.

Unfinished business where office vacated

160 (1) Where a judge or registrar of probate dies, or otherwise vacates his office, every proceeding and matter pending, and all unfinished business in such court, may be taken up, carried on and disposed of by the judge of the county court, or the registrar of the court of probate or the successor of such judge and registrar respectively.

Fresh proceeding unnecessary

(2) No fresh petition, citation or other proceeding shall be necessary in such case.

Where hearing but no determination

(3) If any matter has been heard and not determined, or partly heard, the minutes of evidence taken before such judge or registrar of probate may be used instead of taking the evidence anew, and it shall not be necessary to pass any items of an account already passed by such judge or registrar of probate, if an entry has been made to that effect at his instance or by him before the office was vacated, and a decree may be drawn up and sealed by the registrar or his successor in accordance with such entry.

Where order pronounced but not drawn up or sealed

(4) All decrees and orders which were pronounced but which were not drawn up or sealed before such judge or registrar of probate vacated his office, may be drawn up and sealed by the registrar of probate or his successor in office. R.S., c.238, s.158.

MINISTERIAL FUNCTIONS OF REGISTRAR

Registrar as clerk of court of probate

161 (1) The registrar, where the judge is hearing any matter in the court of probate, shall act as clerk of the court, and shall attend the judge at any sittings of the court.

Registrar subject to judge

(2) The registrar shall be subject to the order of the judge, and all papers in his possession shall be available for the use of the judge.

Preparation of docket and attendance at sittings

(3) The registrar shall, from time to time, inform the judge of any business awaiting his action, and where the judge does not reside in the probate district the registrar shall, whenever the judge holds a sittings of the court of probate, prepare a docket of the business to be disposed of at such sittings, and shall attend at such sittings, with the papers relating to such business.

Transmission of documents

(4) The registrar may, on being required so to do by the judge, transmit to him by mail, registered and prepaid any papers, except an original will, which the judge requires on any hearing at his regular chambers, or elsewhere than at his regular sittings in the probate district in which the business is pending. R.S., c. 238, s. 159.

Costs and Fees Act

162 The registrar, in addition to the fees provided for a registrar in a probate district in which a judge of probate is exercising probate jurisdiction, shall be entitled to take for the performance of duties and services pursuant to Sections 153 to 161 the appropriate fees mentioned in the Costs and Fees Act, as therein prescribed. R.S., c.238, s.160.

APPEALS FROM THE REGISTRAR

Appeal from registrar to judge

163 (1) Any party aggrieved by any order, decree or decision of the registrar, other than a grant of probate or

letters of administration, may appeal therefrom to the judge sitting in the court of probate.

Notice of appeal

(2) The appellant shall, within ten days from the making of such order, decree or decision, file in the registry a notice of appeal.

Hearing of appeal

(3) The appeal shall be heard and disposed of by the judge at the next sittings of the court of probate held by him in the probate district, or at a sittings held on his chambers' day in the probate district in which he resides, or at a special sittings of the court of probate held if an application is made therefor under this Act.

Notice of hearing

(4) Five days notice of such hearing shall be given to the parties who appeared at the contestation before the registrar, or to their solicitors, if they were represented by solicitors.

Powers of judge and evidence on appeal

(5) The judge may hear such appeal and, if the judge thinks fit, any of the parties thereto may adduce the same evidence as that given before the registrar or any further or other evidence and the judge may confirm, vary or set aside the decree, order or decision appealed from, and may make any decree, order or decision which the registrar should have made.

Costs of appeal

(6) If the appeal is contested the costs of the appeal shall be borne by the unsuccessful party.

Appeal from judge to Supreme Court

(7) From the decree, order or decision of the judge upon any such appeal, an appeal to the Appeal Division of the Supreme Court shall lie as in other cases.

Appeal from registrar to Supreme Court

(8) Where a judge is incapacitated or disqualified from hearing any appeal from the registrar, or where the parties consent in writing, the appeal may be taken directly to the Appeal Division of the Supreme Court.

or if already taken, may be transferred to the Appeal Division by order of that Court or a judge thereof. R.S., c. 238, s. 161; 1972, c. 2, s. 8.

Extension of appeal period

164 The Appeal Division of the Supreme Court, or any judge thereof at chambers, upon special cause shown at any time within six months after the time limited for filing notice of appeal, may allow a notice of appeal to be filed in the court of probate upon such terms as seem just, in which case the same proceedings shall be had as when a notice of appeal is filed in other cases. R.S., c. 238, s. 162; 1972, c. 2, s.8.