

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on the Sixth Day of June, 1770, in the Tenth Year of the Reign of Our Sovereign Lord George the Third, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. and there continued by several Prorogations until the Fifth Day of June, 1771, in the Eleventh Year of his said Majesty's Reign, being the Second Session of the Fifth General Assembly convened in the said Province.

11 George III – Chapter 1

An Act in Addition to an Act, made in the Thirty Second Year of His late Majesty's Reign, intituled An Act relating to Wills, Legacies, and Executors, and for the Settlement and Distribution of the Estates of Intestates.

Whereas it is necessary that the Governor, Lieutenant Governor, or Commander in Chief, as judge of probate of wills and testaments, and granting letters of administration, or their commissaries or judges of probate appointed by them for that purpose, should be armed with authority to punish those persons who refuse or neglect to attend at their courts upon due citation.

I. Be it enacted, by the Governor, Council and Assembly, that the Governor, Lieutenant Governor, or Commander in Chief as judge of probate or their commissaries, or judges of probate by them appointed for that purpose, be and are hereby fully authorised to call before him or them, and to require and administer an oath unto any person or persons probably suspected by any executor or administrator, heir, creditor, legatary, or other person, having lawful right or claim to, or in such estate to have concealed, imbezzled, or conveyed away, any money, goods, or chattles left by the testator or intestate, for the discovery of the same, and in case any such suspected person was intrusted by the deceased, attended upon, or was otherwise conversant with, or near unto him at the time of his sickness, or left in the possession of the estate, whereby to strengthen and make the suspicion more violent, and shall refuse to acquit him or herself upon oath, it shall and may be lawful for the said judge of probate, or his commissary, or surrogate, to commit such person so refusing to swear unto the goal of the county, there to remain until he or she shall comply to discharge himself or herself upon oath as aforesaid, or otherwise be released by consent of the executors or administrators, heir, creditors, legatary, or other person, having right or claim to, or in such estate.

II. And whereas great difficulties have attended the distribution of insolvent estates; in order to remedy the same, be it enacted, that when the estate of any person deceased, shall be insolvent, or inefficient to pay all just debts, which the deceased owed, the same shall be set forth and distributed to and among all the creditors, in proportion to the sums to them respectively owing, so far as the said estate will extend, saving that the debts due to the crown, the expence of sickness and necessary funeral charges of the deceased are to be first paid, and the executor or administrator appointed to any such insolvent estate, before payment to any be made (except as aforesaid) shall represent the condition and

circumstances thereof unto the judge of probates, who shall nominate and appoint two or more fit persons to make a true and equal appraisement of such estate, and administer an oath unto them for that purpose; and appoint two or more fit persons to be commissioners with full power to receive and examine all claims of the several creditors, and how they are made out, and such commissioners shall cause the times and places of their meeting to attend the creditors for the receiving and examining of their claims to be made known and published, by polling up the same in some publick places in the shire town of that county, where such deceased person last dwelt, or publishing the same in the publick news papers, three, six, twelve, or eighteen months (as the circumstances of any estate may require) shall be allowed by the judge unto the creditors for bringing in their claims, and proving their debts; at the end of which limited time such commissioners, shall make their report, and present a list of all the claims unto the said judge, who shall order them meet recompence out of the estate for their care and labour in that affair, and the debts due to the crown, expence of sickness, and necessary funeral charges as is herein before provided, being first deduced, shall order the residue and remainder of the estate to be paid, and distributed to and among the other creditors, that shall have made out their claims in due proportion to the sums unto them respectively owing, according as the estate will bear. Saving unto the widow if any be, her right of dower according to law in the houses and lands of the deceased. The widow's dower at the expiration of her term to be also distributed among the creditors in a-like proportion; and no judgement of law (except for debts due to the crown, expence of sickness and funeral charges) shall be allowed against the executors or administrators of any insolvent estate, so long as the same shall be depending; and if any creditor shall not make out his or her claim, before such commissioners within the limited time, such person shall be for ever after debarred of his or her debt, unless he or they can find some further estate of the deceased not before discovered and put into inventory.

Saving unto any person aggrieved at any sentence, order, or decree made by the commissary or judge of probate, liberty of appeal unto the governor and council, such appellant giving bond in a reasonable sum with sufficient security to prosecute his appeal with effect, and to abide and perform the determination, that shall be made thereupon.

III. And be it further enacted, that when the goods and chattels belonging to the estate of any person deceased, shall not be sufficient to answer the just debts, which the deceased owed, upon representation thereof, certified under the hand of the judge of probate with his seal of office to the Supreme Court, the said court are hereby impowered to license, and authorize the executors or administrators of such estate to make sale of all, or any part of the houses and lands of the deceased, so far as shall be necessary to satisfy the just debts, which the deceased owed at the time of his death, and legacies bequeathed in and by the last will and testament of the deceased, and every executor and administrator being so licensed and authorised as aforesaid, shall and may by virtue of such authority make, sign, and execute in due form of law, deeds and conveyances of such houses and lands, as they shall so sell, which instruments shall make a good title to the purchaser, his heir and assigns for ever.

IV. Provided always, that the last clause touching the sale of real estate, and application to the Supreme Court, shall not be in force 'till His Majesty's pleasure therein is known.