At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Monday, the Second Day of October, 1758, and in the 32nd year of His Majesty's Reign.

32 George II – Chapter 11

An Act relating to Wills, Legacies, and Executors, and for the Settlement and Distribution of the Estates of Intestates.

Be it enacted by his Excellency the Governor, Council, and Assembly, and by the authority of the same it is hereby enacted, that every person shall have power to give and devise, by his or her last will and testament in writing and signed by the party so giving and devising, or by some or other person in his presence, and by his express directions, and attested and subscribed, in the presence of the devisor, by three or more credible witnesses, any lands, tenements, or hereditaments, whereof he or she shall, at the time of his or her so giving or devising the same by such will, be lawfully seized, either of a sole estate in fee simple, or of any estate in coparcenary, or in common in fee simple, in possession, reversion, or remainder, as much as in him of right is, to the said lands, tenements, and hereditaments, or in like manner to devise any rents or profits out of the same at his pleasure. Provided that wills made of any lands, tenements or hereditaments, or any rents or profits out of the same, by any woman covert, or person within the age of twenty one years, idiot or of unsound mind, shall not be good in law.

And be it further enacted, that no devise in writing of any lands tenements or hereditaments, shall be revocable, otherwise than by some other will or codicil in writing, or other writting signed in the presence of three or more witnesses, declaring the same, or by burning, cancelling, tearing or obliterating the same by the testator himself, or in his presence, and by his directions and consent.

And be it further enacted by the authority aforesaid, that from and after the first day of January, in the year of our Lord, one thousand, seven hundred, and fifty nine, no nuncupative will shall be good, where the estate thereby bequeathed, shall exceed the value of thirty pounds, that is not proved by the oath of three witnesses (at the least,) that were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them bear witness, that such was his will, or to that effect; nor unless such nuncupative will, was made in the time of the last sickness of the deceased, and in the house of his or their habitation or dwelling, or where he or she hath been resident, for the term of ten days or more, next before the making of such will except where such person was surprised or taken sick, being from his own house, and dyed before he returned to the place of his or her dwelling.

And be it further enacted, that after six months past after the speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony or the substance thereof, be committed to writing, within six days after making the said will.

And be it further enacted, that no letters testamentary, or probate of any nuncupative will, shall pass the seal of any court, till fourteen days, at the least after the decease of the testator be fully expired, nor shall any nuncupative will be at any time received to be proved, unless process have first issues to call in the widow, or next of kindred to the deceased, to the end they may test the same. And all such witnesses as ought to be allowed to be good witnesses upon trial at law, shall be deemed good witnesses to prove any nuncupative will, or any thing relating thereunto.

And be it further enacted, that no will in writing, concerning any personal estate, shall be repealed, nor shall any clause, devise, or bequest therein, be altered or changed by words or will, by word of mouth only, except the same be, in the life of the testator, committed to writing, and after the writing thereof, read unto the testator and allowed by him, and proved to be so done, by three witnesses at the least. Provided nevertheless, that any soldier, being in actual military service or any mariner or seaman, being at sea, may dispose of his moveables, wages, and personal estate, as they might have done before the making of this Act, and that nothing in this Act shall alter the jurisdiction or right of probate of wills concerning personal estates vested in the Governor, or Commander in Chief for the time being, who shall retain the same right and power as they had before in every respect, subject nevertheless to the rules and directions of this Act.

And be it further enacted by the authority aforesaid, that if any executor or executors of the will of any person deceased, knowing of their being so named and appointed, shall not, within the term of thirty days next after the decease of the testator, cause such will to be proved, and recorded in the registers office, of the same county where the deceased person last dwelt, or present the said will, and declare his or their refusal of the executorship; every executor so neglecting his or her trust and duty in that behalf, (without just excuse made and accepted for such delay) shall forfeit the sum of five pounds every month, from and after the expiration of the said thirty days, until he or they shall cause probate of such will to be made, or present the same as aforesaid: Every such forfeiture to be had and recovered by action of debt, in the Inferior Court of Common Pleas, in the same county, at the suit of any of the heirs or creditors, and for the use of him or them that shall inform and sue for the same. And upon any such refusal of the executor, or executors the judge shall commit administration of the estate of the deceased, with the will annexed, unto the widow or next kin to the deceased, and upon their refusal, to one or more of the principal creditors as he shall think fit.

And be it further enacted, that if any person or persons shall be found guilty of suppressing any last will and testament, such person or persons shall be subject and liable to the same penalty, as by this Act is prescribed for persons neglecting to prove any last will and testament.

And be it further enacted, that where any certain legacy is or shall be bequeathed, and given by any person in his or her last will and testament as also where any residuary or uncertain

legacy is or shall, by the account of any executor, be reduced to a certainty, every such legacy and legacies as aforesaid, may be sued for and recovered at the common law; any law, custom or usuage to the contrary nothwithstanding.

And be it further enacted, that henceforth every executor named in any will, taking upon him that charge by proving such will, within the space of three months next after probate thereof, (or at such further and longer time, as the judge of probate shall see meet to allow, the circumstances of any estate requiring the same) shall exhibit into the Registers Office, upon oath, a full and true inventory of the whole estate of the deceased, so far as is then come to his hands and knowledge; and shall add thereto what and so much as may further afterwards appear, on pain of forfeiting five pounds for every month's neglect thereof afterward, as is by law provided for not presenting a will, and to be recovered in like manner. Provided nevertheless, that in wills where, after the payment of debts, and of any certain particular legacy or legacies, the residue or remainder of the estate, is bequeathed generally to any one or more persons, other than the executors themselves; in every such case, an inventory of the estate shall be presented upon oath as aforesaid, and the executors shall be liable to account as administrators are, by law, obliged to do.

And any executor being a residuary legatee, may bring his action of account against his co-executor or executors, of the estate of the testator, in their hands, and may also sue for and recover his equal and rateable part thereof. And any other residuary legattee shall have like remedy against the executors.

And be it further enacted, that when and so often as it shall happen that any person dies intestate, upon application of the widow or next of kin to the intestate, within thirty days after the death of such intestate, the said judge of probate shall grant letters of administration to such widow or next of kin: And in case they neglect to apply within the said thirty days, upon first citing such widow or next of kin, and their refusal to accept the same, such judge of probate shall grant administration to such person or persons as he shall judge fit; and he shall thereupon take bond with sureties, in manner as is directed by the statute of the twenty second and twenty third of Charles the Second, chapter the tenth, intitled “An Act for the better settling Intestates Estates;” and shall and may proceed to call such adminstrators to account for, and touching the goods of the intestate: And upon due hearing and consideration thereof, (debts funeral and just expences of all sorts being first allowed) the said judge shall, and hereby is fully impowered to order and make a just distribution of the surplusage, or remaining goods and estate, as well real as personal, in manner following, that is to say, one third part of the personal estate, to the wife of the intestate for ever, besides her dower in the houses and lands during life, where such wife shall not be otherwise endowed before marriage; and the said judge, having appointed guardians in manner as hereafter may or shall be by law prescribed for all minors, shall then, out of all the residue of such real and personal estate, distribute two shares or a double portion to the Son then Surviving, (where there is no issue of the first born, or of any other elder son) and the remainder of such residue equally to and amongst his other children, and such as shall legally represent them; Provided that children advanced by settlement or

portions not equal to the others shares, shall have so much of the surplusage, as shall make the estate of all to be equal, except the eldest son then surviving, (where there is no issue of the first born, or of any other elder son) who shall have two shares or a double portion of the whole.

And be it further enacted, that such estate wherewith such child or children, have been advanced in the lifetime of the intestate, shall be accounted for upon the oath of such child or children, before such judge of probate of wills, and for granting letters of administration, or by other evidence to the satisfaction of the judge; and in case of refusal to account upon oath, such child or children, so refilling, shall be debarred of any share in the estate of the intestate.

And it is hereby enacted, that the division of such lands or tenements, shall be made by five sufficient freeholders upon oath, or any three of them, to be, for that purpose, appointed and sworn by the judge. Provided nevertheless, that if all the parties interested in such lands or tenements, being of lawfull age shall, by deed, agree to a division, such agreement, being acknowledged before the judge by the parties subscribing and sealing the deed, the said deed being entered on record in the probate office, shall be deemed a legal and valid partition and settlement of such estate, as effectually to all intents as if the same had been divided and settled by Writ of Partition, and be received and allowed in evidence, on any trial against the parties so interested in the said lands and tenements.

Provided nevertheless, that where any estate in houses and lands cannot be divided among all the children, without great prejudice to the whole, the said judge may, on evidence of the same, order the whole, unto the eldest son, or upon his refusal, to any other of the sons successively: He paying unto the other children of the deceased, their equal and proportionable parts or shares of the true value of such houses and lands, upon a just apprisement thereof, to be made by three sufficient freeholders upon oath, to be appointed and sworn as aforesaid, or giving good security to pay the same in some convenient time, as the said Judge shall limit, making reasonable allowance in the mean time, not exceeding six pounds by the hundred in the year. And if any of the children happen to die, before he or she come of age, or be married, the portion of such child deceased, shall be equally divided among the survivors. And in case there be no children, nor any legal representatives of them, then one moiety of the personal estate shall be allotted to the wife of the intestate for ever, and one third of the real estate for term of life. The residue both of the real and personal estate, equally to every of the next of kin of the intestate in equal degree, and those who legally represent them. No representatives to be admitted among collaterals after brothers and sisters children. And if there be no wife, all shall be distributed among the children, and if no child, to the next of kin to the intestate in equal degree, and their legal representatives as aforesaid, and in no other manner whatsoever. And every one to whom any share shall be allotted, shall give bond with sureties before the said Judge of Probate, if debts afterwards be made to appear, to refund and pay back to the administrator, his or her rateable part thereof, and of the administrators charges.

And it is hereby enacted, that the lands and tenements wherewith any widow shall be so endowed as aforesaid, shall, after the decease of such widow, be divided in like manner as by this Act is directed.

Saving to any person aggrieved at any order, sentence or decree made for the settlement and distribution of any intestate estate, their right of appeal unto the governor and council: every person so appealing, giving security to prosecute the appeal with effect. Provided that such appeal be made within thirty days after sentence by the Judge of Probate.

And be it further enacted, that all such estate, real or personal, as is not comprized in any last will and testament, or is not plainly devised or given by the same, shall be distributed in the same manner as intestate estates are directed to be distributed by this Act.

And be it further enacted, that in case that personal assets shall be deficient for the payment of any debts or legacies, and it shall be found necessary by any executor or administrator to make sale of any part of the real estate of the deceased, for the payment of any debts or legacies, such executor or administrator shall apply to the General Assembly to grant a licence for the sale of such part of such real estate, as may be most convenient for the payment of such debts or legacies, and before any sale be made of any real estate, the executor or administrator shall give thirty days publick notice, by polling up notifications in the most publick places in the town where the deceased person last dwelt, and in the publick prints, if any such there be; and whoever will give most shall have the preference in such sale. And in case the estate of such intestate shall be insolvent, the executor or administrator shall make like application to the general assembly for an inquiry, and for the appointment of commissioners to inquire into such insolvency, and to examine and settle the claims of all creditors, and the amount of the estate of such insolvent, and to authorize such executor or administrator to sell all the lands and tenements of such insolvent, and to divide the produce of the whole of such estate, in due proportion to and among the creditors.