Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1786. Saint John, NB: J. Ryan, 1786.

26 George III – Chapter 11

An Act relating to Wills, Legacies, Executors and Administrators, and for the settlement and distribution of the Estates of Intestates.

I. Be it enacted by the Governor, Council and Assembly, that all devises and bequests of any lands or tenements devisable by law, shall be in writing, and signed by the party so devising the same, or by some other person in his or her presence, and by his or her express direction, and shall be attested and subscribed in the presence of the devisor by three or more credible witnesses, or else they shall be utterly void and of none effect.

II. And be it enacted, that no devise in writing, of any lands, tenements or hereditaments, nor any clause thereof, shall be revocable, otherwise than by some other will or codiciI in writing, or other writing 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 direction and consent.

III. And be it enacted, that 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 malting 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 her 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 or her own house, and died before he or she returned to the place of his or her dwelling.

IV. And be it 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.

V. And be it enacted, that no letters testamentary or probate of any nuncupative will shall pass the seal of any court 'till fourteen days at 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 issued to call in the Widow, or next of kindred to the deceased, to the end they may contest the same.

VI. And be it 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 movables, wages, and personal estate, as he or 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.

VII. And be it enacted, 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 register's 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 for such delay) shall forfeit unto his Majesty 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, legatees, or creditors, or in the supreme court by information of His Majesty's attorney general, for the public uses of the province and the support of the government thereof.

VIII. And be it 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.

IX. And be it 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 common law; any law, custom or usage to the contrary notwithstanding.

X. And be it 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 farther 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 register's office aforesaid, 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 months neglect thereof, afterward as is by law provided for not presenting a will, and to be recovered in like manner.

XI. 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 legatee or residuary legatee shall have like remedy against the executors.

XII. And be it enacted, that when and so often as it shall happen that any person dies intestate, the heir at law of such intestate shall be entitled to and receive a double portion or two shares of the real estate left by such intestate, (saving to the widow her right of dower) and the remainder of such estate shall be divided equally to and amongst the other children, or their legal representatives including in the said distribution, children of the half blood, and in case there be no children, to the next of kindred in equal degree and their representatives.—Provided that children advanced by settlement or portions not equal to the other shares, shall have so much of the surplusage as shall make the estate of all to be equal, except the heir at law who shall have two shares or a double portion of the whole.

XIII. And be it enacted, That upon due application within thirty days after the death of any intestate the said judge of probate shall grant letters of administration as is by law directed; and in case. The persons so by law entitled shall neglect to apply within the said thirty days, after first citing, such person or persons, and their refusal to accept the same, such judge of probate shall grant administration to one or more of the principal creditors or to such person or persons as he shall judge fit; and he shall in all cases take sufficient bonds with two able sureties, respect being had to the value of the estate; and shall and may proceed to call such administrators to account for and touching the goods of the intestate: and upon due hearing and consideration thereof, the said judge shall and hereby is fully empowered to order and make just and equal distribution of what remaineth clear (after all debts, funeral and just expenses of every sort first deduced) amongst the wife and children, or children's children, if any such there be, or otherwise to the next of kindred to the dead person in equal degree, or legally representing their stocks *pro fuo cuique jure*, according to the laws in such cases, and the rules and limitation hereacter set down; and the same distributions to decree and settle, and to compel such administrators to observe and pay the same by the due course of law, saving to every one his right of appeal.

XIV. Provided always, and be it enacted, That the judge of probates and every other person who by this act is enabled to make distribution of the surplusage of the personal estate of any person dying intestate, shall distribute the whole surplusage of such estate or estates in manner and form followings that is to say, one third part of the said surplusage to the wife of the intestate, and all the residue by equal portions, to and amongst the children of such persons dying intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children (not being heir at law) who shall have any

estate by the settlement of the intestate, or shall be advanced by the intestate in his life time, by portion or portions equal, to the share, which shall by such distribution be allotted to the other children to whom such distribution is to be made: And in case any child other than the heir at law, who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his life time, by portion not equal to the share which will be due to the other children by such distribution as aforesaid; then so much of the surplusage of the estate of such intestate, to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the life time of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated: But the heir at law, notwithstanding any land that he shall have by descent or otherwise from the intestate, is to have an equal part in the distribution with the rest of the children, without any confederation of the value of the land which he hath by descent or otherwise from the intestate. And in case there be no children nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue of the said estate to be distributed equally to every of the next of kindred of the intestate, who are in equal degree, and those who legally represent them. Provided, That there be no representations admitted among collaterals after brothers and sisters children: and in case there be no wife, then all the said estate to be distributed equally to and amongst the children: and in case there be no child, then the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever. Provided, that if after the death of the father any of his children shall die intestate without wife or children, in the lifetime of the mother, every brother and sister and their representatives shall have equal share with her.

Provided also, and be it likewise enacted, To the, end that a due regard be had to creditors, that no such distribution of the goods of any person dying intestate be made till after one year be fully expired after the intestate's death, except by special order of the judge of probate, and that such and every one to whom any distribution and share shall be allotted shall give bond with sufficient sureties in the said courts, that if any debt or debts truly owing by the intestate shall be afterwards sued for and recover'd, or otherwise duly made to appear; that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that , debt or debts, and of the costs of suit and charges of the administrator by reason of such debt, out of the part and share so as aforesaid allotted to him or her, thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.

Provided always, That in all cases where the judge of probates has used, heretofore to grant administration *cum testamento annexo*, he shall continue so to do, and the will of the deceased in such testament expressed shall be performed and observed in such manner as it should have been if this act had never been made.

Provided, That nothing in this act contained, shall be construed to extend to the estates of *feme coverts* who shall die intestate, but that their husbands may demand

and have administration of their rights, credits, and other, personal estates and recover and enjoy the same as they might have done heretofore.

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 for an 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 governor or commander in chief for the time being, and his Majesty's council of this province, who are hereby authorised and empowered to take cognizance thereof, and to grant a license 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 public notice by posting up notifications in the most public places , in the town where the deceased person last dwelt, and in the public 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 governor or commander in chief for the time being, and his Majesty's council for an inquiry, and for the appointment of commissioners to enquire 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.

And be it further enacted, That every executor or administrator, who may be authorized and empowered to make sale of any real estate, shall, before such sale made give bond by himself, or his lawful Attorney with two sureties, at the office of the register of the court of probates, in the county where such real estate shall lie, for the just and legal distribution of the monies arising from such sale, in the full value which, by the report of the commissioners for that purpose appointed, shall be certified to be necessary to be raised by such sale.