

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1840. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1840.

3 Victoria – Chapter 61

An Act in amendment of the Law relating to Wills, Legacies, Executors and Administrators, and for the settlement and distribution of the Estates of Intestates. Passed 31st March 1840.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the Surrogates already appointed or hereafter to be appointed by the Lieutenant Governor or Commander in Chief, in the several and respective Counties in this Province, shall have power to take the Probate of Wills, and to grant Administration on the Estates of deceased persons in the manner heretofore accustomed, subject nevertheless to the rules and directions hereinafter prescribed, and shall continue in office and be in all respects authorized to act as such Surrogates, until some other person shall be appointed in his stead, without taking out any new Commission on the change of the person administering the Government of this Province.

II. And be it enacted, That the Court of Chancery in this Province shall have appellate jurisdiction of all matters cognizable by the said Surrogates for the respective Counties, and shall also have the powers and jurisdiction hereinafter prescribed.

III. And be it enacted, That the Lieutenant Governor or Commander in Chief for the time being, shall and may appoint a Register of Probates in the several and respective Counties of this Province, who shall have the care, custody and keeping of all books and papers belonging to the Surrogate Court or the Probate Office in the County for which he shall be appointed.

IV. And be it enacted, That every Surrogate or Register shall respectively be sworn to the faithful performance of the duties of his office, before he enters thereupon.

V. And be it enacted, That the said Court of Chancery shall and may from time to time make, establish, alter, and amend rules and forms of practice and proceedings, as well for that Court in matters made cognizable before it by this Act, as for the said Surrogate Courts, in such manner as the Court of Chancery shall see fit, provided that such rules and forms be in no wise repugnant to this Act.

VI. And be it enacted, That no Surrogate shall admit to Probate any Will, or grant Letters Testamentary, or of Administration, in any case or upon any Estate where he shall be interested as next of kin to the deceased, or as Executor or Legatee under such Will.

VII. And be it enacted, That where any Surrogate who would otherwise be authorized to act, shall be so interested, the Lieutenant Governor or Commander in Chief for the time being, shall and may on the application of any party entitled to such Probate or Administration, specially appoint some other person within the said County Surrogate *pro hac vice*, who shall be vested, as regards such Estate, with all the powers and authority incidental thereto.

VIII. And be it enacted, That from and after the passing of this Act, when any sole or surviving Executor of any last Will and Testament may die testate, leaving an Executor of his last Will and Testament, such last mentioned Executor shall not ipso facto be the Executor of the last Will and Testament of the first Testator; but in such case, Administration *cum testamento annexo* may be granted in the same manner as if such first Executor had died intestate, any law or usage to the contrary notwithstanding.

IX. And be it enacted, That any person aggrieved by any order, sentence, decree or denial of any Surrogate, may appeal therefrom to the said Court of Chancery; Provided that the appeal be filed in the Registry of such Surrogate Court within thirty days after the making of such order, sentence, decree or denial; and that the party appealing do, at the same time with the appeal, file in the Registry of such Surrogate Court, a Bond to the said Surrogate with two sufficient sureties, in the penal sum of thirty pounds, conditioned for the payment of such costs as shall be awarded against him by the said Court of Chancery, upon such appeal: and such appeal when so perfected, by the filing of such bond therewith, shall suspend all proceedings upon the decision appealed from, until the appeal be determined.

X. And be it enacted, That upon such appeal being perfected, and upon the Fees allowed by Law for the services in this Section required being paid, such Surrogate shall immediately transmit to such Court of Chancery a copy of such appeal, and of all papers, documents and testimony produced before him in relation to the subject of such appeal, duly certified under the Seal of the Surrogate Court, with a statement of the decision made by him, and the reasons of such decision.

XI. And be it enacted, That the said Court of Chancery, on due proof of an appeal from the decision of a Surrogate having been perfected, and of the neglect or unreasonable delay of such Surrogate to transmit such appeal, with the copies as above directed, and the said fees having been paid or tendered, may proceed to enforce such return by attachment as for a contempt of such Court: and the said Court of Chancery may at any time within six months after the time herein before limited for filing and perfecting such an appeal in the Surrogate Court, upon special cause shewn, and on such terms as it may appear just to prescribe, allow an appeal, in which case the same proceedings shall be had as if the appeal had been originally entered in the Surrogate Court.

XII. And be it enacted, That it shall be in the discretion of the said Court of Chancery, as well in cases of appeal as in any other proceeding relating to the Estates of deceased persons, before such Court, to award costs to be paid personally by the parties against whom such costs shall be awarded, or out of the Estate which may be the subject of the proceeding, as the said Court may direct; and payment of such costs may be enforced against appellants by a suit upon the Bond hereinbefore directed to be given for that purpose, and against other parties by process of Attachment: Provided that no attachment shall issue until proof be made by affidavit of a personal demand of such costs, and of a refusal or neglect to pay the same, and that no suit on such Bond shall in any case be commenced without the order of the said Court of Chancery.

XIII. And be it enacted, That if upon the hearing of any matter relating to the Estate of a deceased person by the Court of Chancery, whether upon appeal or upon application to sell real estate for the payment of debts as hereinafter directed, or otherwise, any question of fact shall arise, which, in the opinion of the said Court, cannot be satisfactorily determined without a trial by Jury, such Court shall have authority to order a feigned issue to be made up in the Supreme Court, and to prescribe the manner of making up such issue, so as to present the question in dispute, and to direct the County in which the same shall be tried; and the Supreme Court shall have power to grant new trials of such issues, as in personal actions pending in that Court, and the final determination of such issue shall be conclusive as to the facts therein controverted in the proceedings before the Court of Chancery; and it shall be in the discretion of the said Court of Chancery to order and direct by whom and in what manner the costs and expenses attending any such issue shall be paid.

XIV. And be it enacted, That if in any such matter pending before the said Court of Chancery, any question of law shall arise upon which such Court should wish to have the opinion of the Supreme Court, such Court shall have authority to order a case to be stated for the opinion of the Supreme Court, and to pre-scribe the manner of stating such case; and the Judges of the Supreme Court, after the case has been argued and considered by them, shall certify their opinion thereupon to the said Court of Chancery; and the said Court of Chancery shall have the like discretion as to the costs and expenses attending such cases, as be-fore provided with regard to feigned issues.

XV. And be it enacted, That the said Surrogate Courts shall have power to issue Subpoenas to compel the attendance of any witnesses, or the production of any paper material to any enquiry pending in any such Courts, (which Subpoena shall be according to the Schedule to this Act annexed, or in words to the like effect), and shall also have power to punish disobedience to any such Subpoena, and to punish witnesses for refusing to testify after appearing, in the same manner and to the same extent as Courts of Record in similar cases.

XVI. And be it enacted, That Citations issued out of the Surrogate Courts for the respective Counties, shall be served in the following manner (except in cases otherwise specially provided for by law) that is to say: by posting up the same in three, such public places in the County as the Surrogate may direct, at least three weeks before the return of the Citation, and by publishing the same once in each week for three successive weeks in a newspaper published in the County, if there be any such newspaper, or if in any case the Surrogate shall think special personal service to be requisite, and shall so direct, and the person to be cited can be found within the County or has a known place of abode therein, the Citation shall be served by delivering a copy thereof to each person to be cited, or by leaving such copy at his place of abode with an adult person residing in the house, who shall at the same time be informed of its contents and meaning, and the service of Citations shall in all cases be made to appear by affidavit duly made and filed before the Surrogate.

XVII. And be it enacted, That every Sheriff, Constable or other Ministerial Officer to whom any Citation, Subpoena, Attachment or other Process duly issued by any such Surrogate Court, may be directed or delivered for the purpose of being executed, shall execute the same in the same manner as if issued by a Court of Record, and for any neglect or misfeasance therein, shall be

subject to the same penalties, actions and proceedings as if the same had occurred in relation to process issued by Courts of Record.

XVIII. And be it enacted, That the testimony taken by any Surrogate in relation to the proof of any Will, in any controversy before him relating to any matter of which he has cognizance, shall be reduced to writing, and shall be entered, into a book to be kept for that purpose.

XIX. And be it enacted, That no Surrogate shall be Counsel, Attorney or Proctor for any party, in any matter pending or to be brought before him.

XX. And be it enacted, That any Surrogate shall have power to award and tax costs against any party, against whom a decision may be made in any matter contested before such Surrogate, to be paid personally or out of the Estate of the deceased, as he in his discretion may order, which taxation and order shall have the like effect as a Judgment in a Court of Record, upon which Execution may be awarded by such Surrogate, agreeably to the form in the Schedule hereto annexed or in words to the like effect: Provided always, That any such taxation and order may be reviewed by the Court of Chancery, upon notice given to the party in whose favour such taxation and order may be made, without any appeal being entered and perfected.

XXI. And be it enacted, That the Surrogate of each County shall have sole and exclusive power to take the Probate of Wills, and to grant Administration on the Estates of deceased persons, who at or immediately previous to their death, shall be inhabitants of such County, in whatever place the death of such persons may have happened.

XXII. And be it enacted, That in cases when the deceased person was not, at or immediately previous to his death, an inhabitant of any County of this Province, the Surrogate of any County in which such deceased person may have left assets, shall have power to take the Probate of Wills and grant Administration of the Estate; and the Surrogate who shall so take the Probate of the Will or first grant Administration of the Estate, shall be deemed thereby to have acquired jurisdiction, in exclusion of the jurisdiction of any other Surrogate over such Estate, and shall be vested with all the powers incidental thereto.

XXIII. And be it enacted, That every person wishing to obtain Letters Testamentary or of Administration, shall apply to the Surrogate by Petition in writing setting forth according to the best of the knowledge and belief of the applicant, the time and place of the death of the deceased person, and such other particulars as may be necessary to support the application, together with the amount of the Estate both real and personal of the deceased person; which Petition shall be verified before the Surrogate by the oath of the applicant, and the Surrogate may if he see fit examine any other person upon oath, as to the facts necessary to be enquired into on granting Letters Testamentary or of Administration; and if there shall be any person having prior right by Law to Administration, either with the Will annexed or in case of intestacy, the applicant shall produce, prove and file in the Surrogate Court a written renunciation of the persons having such prior right to Administration, and if such applicant shall fail so to do, then and in such case, before any Letters of Administration be granted, a Citation shall be issued to all persons having such prior

right to shew cause, at a day to be therein specified, why Administration should not be granted to such applicant.

XXIV. And be it enacted, That from and after the passing of this Act, the Bond taken from Administrators on the granting of Administration, shall be given to the Surrogate Judge of Probates who grants such Administration, any usage to the contrary notwithstanding, and two or more competent sureties to be approved of by the Surrogate, shall join in such Bond with the Administrator; and such Bond shall be according to the form and with the condition prescribed in the Schedule to this Act annexed, or in words to the like effect, and shall be filed in the Registry of the Surrogate Court which grants the Administration, before the Letters of Administration are issued.

XXV. And be it enacted, That if objection should be made by any Creditor of a Testator, or any Legatee, relative, or other person interested in his Estate, against granting Letters Testamentary to one or more of the persons named in the Will as Executors, the Surrogate shall enquire into such objection, and if it appear that the circumstances of any person named as such Executor are such that in the opinion of the Surrogate they would not afford adequate security to the Creditors, Legatees or relatives of the Testator, for the due Administration of his Estate, he may refuse Letters Testamentary to any such person, until he shall give the like Bond as is required of Administrators in cases of Intestacy.

XXVI. And be it enacted, That the Surrogate on granting Letters of Administration, and also when he may consider it proper and necessary on granting Letters Testamentary, and as often afterwards as he may thing necessary, shall by a Warrant of Appraisement, appoint two or more disinterested persons to estimate and appraise all the real and personal Estate of the Testator or Intestate; and such Appraisers shall be entitled to receive a reasonable compensation for their services, to be allowed by the Surrogate, not exceeding ten shillings per day for each appraiser for the time they may be actually employed.

XXVII. And be it enacted, That when appraisers are so appointed, the inventory shall be made by the Executor or Administrator, with the aid of such appraisers, and when property shall be in different and distant places, two or more inventories may be made, and shall with the Warrant of Appraisement be returned and filed with the Register of Probates, within three months from the time of granting the same, unless a further time be given by the Surrogate.

XXVIII. And be it enacted, That before proceeding to the execution of their duty, the Appraisers shall take an oath, to be administered either by the Surrogate or any person authorized to take Affidavits to be read in the Supreme Court, that they will truly and impartially appraise the Real and Personal Estate which may be exhibited to them, according to the best of their knowledge and ability; the taking of which oath shall be certified on the Warrant of Appraisement by the person who administered the same.

XXIX. And be it enacted, That the Inventory shall contain a true and perfect description and estimate, of all the Real Estate, Goods, Chattels and Credits of the deceased person, as well in

possession as in action, and shall also specify the names of all the debtors of the deceased known to the Executors or Administrators, together with the nature of the debt, and the security therefor, whether by Judgment, Bond, Mortgage, Promissory Note, Book Debt or otherwise; and the date of each security, the sum originally payable, and the payments, if any, which have been made thereon; and shall distinguish those debts which in the opinion of the Appraisers are doubtful or desperate; and shall also contain an account of all monies, whether in specie or Bank Bills, belonging to the deceased, which shall have come to his hands or knowledge of the Executor or Administrator; and if no such monies shall have come to his hands or knowledge, the facts shall be so stated in the Inventory, and the Inventory shall be verified by the oath of the Executor or Administrator before the Surrogate.

XXX. And be it enacted, That the bare naming of any person Executor in a Will or the granting of Administration to any debtor of any Intestate, shall not operate as a discharge of any just claim which the Testator or Intestate had against such person; but such claim shall be included among the credits and effects of such deceased person in the Inventory; and such Executor or Administrator shall be liable for the same, as for so much money in his hands at the time such debt or demand shall be due and payable, and shall apply and distribute the same as part of the personal Estate of the deceased.

XXXI. And be it enacted, That in case of an Executor or Administrator failing to return the Inventory within the time limited for that purpose, he may be required so to do by a Citation from the Surrogate: such Citation to be issued on the application of some person having an interest in the Estate of the deceased as Creditor, Legatee or next in Kin, or of some person in behalf of a Minor having such interest, or of any surety upon an Administration Bond.

XXXII. And be it enacted, That whenever property of any kind not mentioned in any Inventory that shall have been made, shall come to the possession or knowledge of an Executor or Administrator he shall cause the same to be appraised in manner aforesaid, and an Inventory thereof to be returned within three months after the discovery thereof; and the making of such Inventory and return, may be required in the same manner as in the case of the first Inventory.

XXXIII. And be it enacted, That every Executor or Administrator shall proceed with diligence to pay the debts of the deceased according to their legal priority in the order of classes; and all debts of the same class shall be paid in equal proportion, and no preference shall be given in the payment of any debt over debts of the same class, nor shall a debt due and payable be entitled to a preference over debts not due; nor shall the commencement of a suit for the recovery of any debt, or the obtaining of a Judgment therein, entitle such debt to any preference over others of the same class; nor shall any debt of an Executor or Administrator, be entitled to any preference over others of the same class; Provided always, that all allowances made by the Surrogate to any Executor or Administrator for expenses and services shall have priority in payment to any debts of what class soever.

XXXIV. And be it enacted, That in any suit against an Executor or Administrator, the Defendant, if he plead that he has fully administered, may shew under a notice for that purpose to be given

with such plea, (which notice may be proved to have been delivered on the trial, either ore tenus or by affidavit of the person delivering the same,) that there are debts of a prior class unsatisfied, or that there are debts unpaid of the same class with that on which the suit is brought, and the Defendant shall on such issue be chargeable only for such part of the assets in his hands, as shall remain after satisfying the debts of the prior class, and as shall be a just proportion to the other debts of the same class with that on which the suit is brought; Provided always, that the Defendant shall not be allowed to give evidence under such notice of any such debt not particularly specified in the notice, and that the Plaintiff may shew in reply, to the evidence of such debt, any matter of which he could have availed himself in pleading; and the Plaintiff may as in other cases, take judgment for the whole or part of his debt to be levied of future assets; and in any proceedings upon such judgment for future assets the Defendant shall be chargeable only with the just proportion of such future assets, payable to the Plaintiff upon the principle hereinbefore prescribed for the payment of debts of deceased persons.

XXXV. And be it enacted, That an Executor or Administrator shall render an account of his administration to the Surrogate, within eighteen months from the date of the Letters Testamentary or of Administration, and may after the expiration of that time be required so to do by a citation to be issued on the application of any such person as is hereinbefore described as entitled to require the return of an inventory; but the Surrogate may, for reasonable cause, allow further time for rendering such account.

XXXVI. And be it enacted, That on making such account every Executor or Administrator shall produce vouchers for all debts and legacies paid, and for all funeral charges and just and necessary expenses; and that such Executor or Administrator may be examined upon oath by the Surrogate, touching any property or effects of the deceased, which have come to his hands or knowledge, and the disposition thereof; and that such Executor or Administrator may be allowed any item of expenditure not exceeding five pounds, for which no voucher is produced, if such expenditure is supported by his own oath positively to the fact of payment, specifying when and to whom paid, and if such oath be uncontradicted.

XXXVII. And be it enacted. That the Surrogate in passing any account of any Executor or Administrator, may make allowance to any Executor or Administrator for property of the deceased which hath perished or been lost in part or in the whole, without the fault of such Executor or Administrator, provided that such allowance shall not be conclusive on the rights of any party contesting the question.

XXXVIII. And be it enacted, That no Executor or Administrator shall make any profit by the increase or income of any part of the Estate, but shall charge himself with such increase in his account.

XXXIX. And be it enacted, That the Surrogate may allow to Executors and Administrators, over and above all such actual and necessary expenses as may appear just and reasonable, a reasonable commission, not exceeding five per cent, on the amount received by them.

XL. And be it enacted, That when any provision shall be made by any Will for specific compensation to an Executor, the same shall be deemed a full satisfaction for his services, in lieu of the aforesaid allowance, or his share thereof, unless such Executor shall, by writing to be filed with the Surrogate, renounce all claim to such specific legacy.

XLI. And be it enacted, That whenever any Executor or Administrator shall have rendered and filed his account, whether upon or without being cited so to do, a Citation shall issue requiring the Creditors and next of kin of the deceased, and all persons interested in the Estate, to appear before the Surrogate on a day to be therein specified, not less than thirty days from the time of issuing such Citation, to attend the passing and allowance of such account, and such Citation shall be published once in each week for four weeks successively, in a newspaper printed in the County, (if any such there be,) and copies of such Citation shall be posted up in such three of the most public places in the County as the Surrogate shall direct, thirty days before the day named in the Citation for the passing, and allowance of the account; and such Citation shall be also published in such other newspaper printed in any other County where Creditors or other persons interested in the Estate may reside, as the Surrogate, may direct.

XLII. And be it enacted, That any Creditor, Legatee or other person interested in the Estate of the deceased, may attend the passing of such account, and contest the same; and any such person, as well as the Executor or Administrator, may have Subpoenas from the Surrogate Court to compel the attendance of witnesses; and the hearing of the allegations and proof of the respective parties may be adjourned from time to time as may be necessary.

XLIII. And be it enacted, That the tenth, eighteenth and nineteenth Sections of an Act made and passed in the twenty sixth year of the Reign of King George the Third, intituled "An Act relating to Wills, Legacies, Executors and Administrators, and for the settlement and distribution of the Estates of Intestates," be and the same are hereby repealed, save and except that all proceedings heretofore had, under and "by virtue of the said tenth, eighteenth and nineteenth Sections, and all Licences granted to any Executor or Administrator for the sale of Lands, made before the passing of this Act, and all proceedings to be had there-under shall be and remain valid and effectual to all intents and purposes, in the same manner and to the same extent as if this Act had not been made and passed.

XLIV. And be it enacted, That in case the personal Estate of any deceased person shall not be sufficient to pay his debts, and it be found necessary to apply the Real Estate of such person in payment of such debts, the said Court of Chancery shall have cognizance of the matter, and shall be authorized and empowered to grant a Licence to the Executors or Administrators for the application of the Real Estate for that purpose, as hereinafter mentioned.

XLV. And be it enacted, That in order to obtain such Licence, the Executor or Administrator shall at any time within three years after the granting of the Letters Testamentary or of Administration, apply to such Court of Chancery by Petition, setting forth in such Petition the amount of personal property which has come to the hands of such Executor or Administrator, the debts so far as they can then be ascertained against the Estate of the deceased person, a description of the real estate

of the deceased, with the value of the respective lots or parts thereof, and whether occupied or not, and if occupied, the names of such occupants, so far as may have come to his knowledge, and the names and ages of the heirs and devisees (if any) of the deceased, which Petition shall be verified by the oath of the Petitioner, taken and certified thereon by the Surrogate, and there shall also be annexed to such Petition a certified copy of the inventory and appraisement on file, and in case he died testate, a copy of the Will.

XLVI. And be it enacted, That the said Court of Chancery shall thereupon have cognizance of the matter of such Petition, and after giving notice to the parties interested, either personally or by advertisement in any newspaper in the Province, as such Court may order and direct, shall proceed to hear and examine the allegations and proofs of the Petitioner, or any person interested in such real estate, who may think proper to oppose such application, and also the validity or legality of any debt or demand which may be represented as existing against the Testator or Intestate.

XLVII. And be it enacted, That when in any case after due examination, the said Court of Chancery shall be satisfied that the personal estate of the Testator or Intestate is insufficient for the payment of debts, it shall be lawful for such Court to grant a Licence in general terms for the sale of such real estate, or such part thereof as may be sufficient to pay the said debts, or to specify in such Licence the particular parts or portions of the real estate so to be sold; and in cases where Licence is given to sell only a specified part of the real estate, such Court may from time to time proceed to grant further Licence to sell a further part, or all such real estate, if necessary, for the payment of such debts.

XLVIII. And be it enacted, That the said Court of Chancery, upon the application of any Creditor, made after the expiration of one year, and before the expiration of three years from the time of granting Letters Testamentary or of Administration, and shewing probable cause for believing that there will not be sufficient personal assets to pay the debts of the Testator or Intestate, may proceed to examine into the matter, as in the case of such application on the part of an Executor or Administrator, due notice thereof being given to parties interested, as prescribed in the forty sixth Section of this Act; and if after due examination, such Court shall be satisfied that the personal estate of such Testator or Intestate is insufficient for payment of the debts, it shall be lawful for such Court to grant Licence to sell all or part of the real estate, in the same manner as if the application had been made therefor by such Executor or Administrator.

XLIX. And be it enacted, That if it shall appear to the said Court of Chancery that it will be for the advantage of the heirs or devisees of any Testator or Intestate, and will not be injurious to Creditors, to lease the real estate or any part thereof for any term not exceeding twenty one years, in lieu of selling the same for the purpose of raising money to pay debts, the said Court may so direct in such Licence, and any Lease executed by such Executor or Administrator in pursuance thereof, shall have the like force and effect as if executed by the Testator or Intestate immediately before his death.

L. And whereas in cases of small Estates, the expense of proceeding in Chancery for Licence to sell or lease real estate may be disproportioned to the value of the property; Be it therefore enacted, That when the real estate required to be sold for the payment of debts of any Testator or Intestate shall not exceed the sum of one thousand pounds, the Surrogate Court shall have the like power and cognizance with the said Court of Chancery, to receive applications, to examine the matter, and to grant Licences to sell or lease such real estate of the Testator or Intestate: Provided, that if any person interested, should contest the granting of such Licence, and should appeal from any decision of such Surrogate in regard thereto, that then such Licence shall be held null and void, and no further proceedings shall be had thereunder; and upon such appeal the said Court of Chancery shall proceed as if upon an original application to sell or lease.

LI. And be it enacted, That every Licence to sell or to lease real estate as aforesaid, shall be made in such form as the said Court of Chancery or Surrogate may prescribe, and shall be registered by the Register of the said Courts respectively, in a book to be kept for that purpose; and a copy of such Record, certified under the hand of any such Register, shall be evidence of such Licence in all Courts without further proof.

LII. And be it enacted, That upon, a Licence to sell or lease any real estate as aforesaid being granted, the Executor or Administrator shall be deemed entitled to all the rents and profits of the real estate of the Testator or Intestate, accruing from the time of his death, and shall and may have and maintain all actions and other lawful means for recovering the same; and all the proceeds of such real estate shall be legal assets in the hands of such Executor or Administrator for the payment of such debts: Provided always, That any rent becoming due after the death of the Testator or Intestate, and paid in good faith by any tenant to any heir or devisee, before notice of such Licence, shall not be recoverable from such tenant by an Executor or Administrator.

LIII. And be it enacted, that before any sale or lease be made of any real Estate by virtue of such Licence, the Executor or Administrator shall give thirty days public notice of such sale or letting, by posting up notification's in three at least of the most public places in the County where the land lies, and by publishing such notification once in each week for four successive weeks in a newspaper printed in such County (if any such there be); in which notification the several parcels of the lands and tenements to be sold or leased shall be particularly and appropriately designated, and whoever will give the most shall have the preference in such sale or letting, and such sale or letting shall be by public auction.

LIV. And be it enacted, That before any Executor or Administrator do proceed to sell or lease any such Real Estate they shall first give Bond to the Surrogate Judge of the County where the Letters Testamentary or of Administration were granted, with two sufficient sureties to be approved of by such Surrogate, in such penalty, not exceeding double the amount to be raised by such sale or letting, as the said Surrogate may think fit to direct: which Bond shall be agreeable to the form and with the condition prescribed in the Schedule to this Act annexed, or in words to the like effect, and shall be filed with the Register of the said Surrogate Court before the completion of such sale or letting.

LV. And be it enacted, That on the sale or letting of any such Real Estate under such Licence, the Executor or Administrator shall and may execute a Deed or Lease of the premises so sold or leased, in which the substance of such Licence shall be recited; which Deed or Lease shall have the like force and effect (except as to rent or profits up to the date thereof) as if made and executed by such Testator or Intestate immediately before his death.

LVI. And be it enacted, That every conveyance made by any Executor or Administrator under the provisions of this Act, having been first duly acknowledged or proved, according to the laws relating to the Registry of Deeds, and affidavit having been made by such Executor or Administrator, before any Officer or Court duly authorized to take acknowledgements or proof of the execution of Conveyances. and indorsed on the said Conveyance, that the said premises mentioned in such Conveyance have been duly advertised and sold according to law, may be registered in the Registry Office where the Lands lie; and such Conveyance so registered, or a copy thereof, may be given in evidence in any Court of Law or Equity in this Province, in like manner with, and under the same Rules and Restrictions as any other registered Deed, and when so given in evidence, together with the proof as herein before mentioned of such Licence, shall be deemed and taken to be evidence that all the proceedings on which such Conveyance is founded were rightly had and done.

LVII. And be it enacted, That no Bond given agreeably to the provisions of this Act, shall be put in suit without an Order of the Court of Chancery for that purpose to be made, on the application of some person interested in such Estate, either as Creditor, Legatee, Heir, or next of Kin; which order may be proved by a Copy thereof, certified under the hand of the Register of such Court, and shall have the effect of an assignment of such Bond *pro hac vice* to the party so interested and suing, and entitle him to proceed thereon in his own name as assignee thereof, in any Court of competent Jurisdiction in this Province, and the party so suing shall be entitled to recover, and also be liable to pay costs to be taxed in such suit as in ordinary cases: and such Court may make such order for the delivery of any such Bond for the purpose of being read in evidence in any Court, and being again returned to the Office where it is filed, as the ends of justice may require; and whenever any such Bond shall be so put in suit, recovery may be had thereon to the full extent of any injury sustained by the estate of the deceased person by the acts or omissions of such Executor or Administrator within the purview of the Bond, and to the full value of all the property of the deceased person within the purview of the Bond, received and not duly administered by such Executor or Administrator; and the amount recovered on such Bond (after deducting the necessary expenses attending recovery, to be allowed by the said Court of Chancery) shall be deemed assets, and shall be applied and distributed under the order and direction of the said Court of Chancery for that purpose to be made; and the said Court of Chancery may from time to time order such Bond to be put in suit as occasion may require: Provided always, That the whole amount to be recovered in any such suit or suits, shall never exceed the penalty of the Bond.

LVIII. And be it enacted, That the fees to be hereafter received for services and proceedings in the Surrogate Courts, shall be according to the Table in the Schedule to this Act annexed.

LIX. And be it enacted, That the forms of Bonds, Warrants of Appraisement, Citations, Subpoenas, Executions and Attachments, shall be according to the forms in the Schedule to this Act annexed, or in words to the like effect.

SCHEDULE.

No. 1.—Administration Bond.

Know all Men by these Presents, That We _____ are held and firmly bound unto the Surrogate Judge of Probates in and for the County of _____ in the sum of _____ Pounds of lawful money of the said Province, to be paid to the said Surrogate Judge of Probates for the time being; for which payment to be well and truly made, We bind ourselves, and each of us by himself for and in the whole, our and each of our Heirs, Executors and Administrators, firmly by these Presents. Sealed with our Seals, dated this ____ day of _____, in the year of our Lord one thousand eight hundred and _____.

The Condition of this obligation is such, that if the above bounden Administrator of all and singular the Goods, Chattels and Credits of deceased, do make or cause to be made a true and perfect Inventory of all and singular the Real Estate, Goods, Chattels, and Credits of the said deceased which have or shall come to the hands, possession or knowledge of the said _____, or into the hands or possession of any other person or persons for _____, and the same so made do exhibit or cause to be exhibited into the Registry of the Surrogate Court for the said County of _____ on or before the ____ day of _____ next ensuing; and the same Goods, Chattels and Credits, and all other the Goods, Chattels, and Credits of the said deceased at the time of his death, which at any time after shall come to the hands or possession of the said _____ or into the hands or possession of any other person or persons for _____, do well and truly administer according to Law; and further do make or cause to be made a true and just account of the said Administration, at or before the ____ day of _____, and all the rest and residue of the said Goods, Chattels, and Credits which shall be found remaining upon the said Administrator's account, the same being first examined and allowed of by the said Surrogate Court or other Court of competent authority in that behalf, by decree or sentence, pursuant to the true intent and meaning of the Act or Acts of the General Assembly of the said Province for the settlement and distribution of the Estate of Intestates, shall limit and appoint. And if it shall hereafter appear that any last Will and Testament was made by the said deceased, and the Executor or Executors therein named, do exhibit the same into the said Surrogate Court, making request to have it allowed and approved accordingly, if the said _____ above bounden being thereto required, do render and deliver the Letters of Administration (Probate of such Testament being first had and made,) unto the said Surrogate Court. Then this obligation to be, void and of no effect, or else to remain in full force and virtue.

Sealed and delivered }
in presence of }

[The Bond when given by any Executor to be in like form, substituting, Executor, &c. for Administrator, &c., and omitting the words between the asterisks.]

No. 2.—Bond on Appeal.

[The Bond to be taken for £30 payable to the Surrogate in the same manner as Administration Bonds, and conditioned as follows:]

Whereas the above bounden _____ hath appealed from the decision of the said Surrogate Judge of Probates, made in a certain matter pending before him: Now the condition of this obligation is such, that if the said _____ shall well and truly pay such costs arising from such appeal, and to such person as the Court of Chancery may order and direct, then this obligation to be void, otherwise to remain in full force.

Sealed and delivered }
in presence of }

No. 3.—Bond on Sale of Real Estate.

Know all Men by these Presents, That We {as in Administration Bond.}

Whereas Licence has been granted by the Court of Chancery (or Surrogate Court in and for the County of _____ as the case may be) to the above _____ bounden Executor of the last Will and Testament (or Administrator of all and singular the Goods, Chattels and Credits, as the case may be,) of deceased, to sell (or lease, as the case may be,) Real Estate of the said deceased, for payment of debts.

Now the condition of this obligation is such, That if the said Executor (or Administrator) as aforesaid, do and shall well and faithfully apply all monies arising from the sale (or lease) of any of the Real Estate of the said deceased, or otherwise from the rents and profits thereof, in payment of the debts of the said deceased, agreeably to Law, and shall well and truly account for the same in _____ Administration account before the Surrogate Court for the County of _____ or other Court of competent authority in that behalf, and shall pay any surplus of such monies which shall be found remaining in his hands upon such accounting, unto such person or persons as the said Surrogate Court for the said County of _____ or other Court of competent authority in that behalf shall by decree or sentence, pursuant to the true intent and meaning of the Act or Acts of the General Assembly of the said Province, in such case made and provided, limit and appoint, then this obligation to be void and of no effect, otherwise to remain in full force and virtue.

Sealed and delivered }
in presence of }

No. 4.—Warrant of Appraisement.

New Brunswick, County of _____ ss.

To A. B. &c. Greeting: You are hereby appointed and empowered to take an Inventory of all the Real Estate, goods, chattels and credits, of which late of _____ in the County aforesaid, Yeoman, died, seised or possessed within the Province, and according to your best skill and judgment truly appraise the same, which, when completed, you are to deliver to the Executor (or Administrator) of the said deceased, to be returned, together with this Warrant, in three months from the date hereof. Given under my hand this _____ day of _____ 184__.

B. P., Surrogate, &c.

_____ ss. The above named Appraisers personally appeared before me, and made oath that they would faithfully and impartially perform the services to which they are appointed by the above Warrant.

A. L. Commissioner, &c.

No. 5.—Citation.

New Brunswick. _____ ss. To the Sheriff of the County of _____ or any Constable within the said County, Greeting: Whereas A. B., Executor (or Administrator, or other person interested, as the case may be,) hath prayed that may appear and (here state in short form, the object,) You are therefore required to cite the said _____ (and all others interested, as the case may be,) to appear before me at a Court of Probate to be held at within and for said County, on the _____ day of _____ next, to (here state in short form the object.) Given under my hand and the Seal of the said Court, this _____ day of _____ 184__.

A. Z., Surrogate. &c.

A. F.,

Register of Probates for said County.

No. 6.—Subpoena.

_____ ss. To _____ Greeting: You are hereby required to appear before me, at a Court of Probate to be held at _____ within and for said County, on _____ the _____ day of _____ to testify and give evidence what you may know touching (here state shortly the object,) hereof fail not. Given under my hand this _____ day of _____ 184__.

B. P., Surrogate, &c.

County of _____.

No. 7.—Execution.

Surrogate Court.

County of _____ ss, To the Sheriff of the said County of _____

Greeting:

You are hereby required (or in case it be an alias Execution, as before,) to levy of the goods and chattels of _____ within your Bailiwick, the sum of _____ for costs awarded in favour of _____ in a certain proceeding lately had before me as Surrogate Judge of Probate in and for said County, and have that money before me at my Office in _____, within thirty days from the date hereof, to be rendered to the said _____ and for want of such goods and chattels whereon to levy, you will take the body of the said _____ and deliver him to the keeper of the Gaol of said County, and the said keeper will take the said _____ in custody, and him safely keep, until the said sum, and your costs of levying this Execution be paid. And make return hereof within thirty days from the date hereof. Given under my hand this _____ day of _____ 184__.

A. L. Surrogate.

O. P., Register.

No. 8.—Attachment.

Surrogate Court.

County of _____ ss. To the Sheriff of _____ Greeting;

You are hereby required to attach by his body, _____ if found within your Bailiwick, and him safely keep, so that you may have his body before me at my Office in _____ on the ____ day of _____ next coming, to answer concerning a contempt, by him lately committed, in neglecting to appear before me, pursuant to a Subpoena issued in that behalf, (or in case it be for refusing to testify after appearing, for refusing to testify before me,) in a certain matter lately pending before me as Surrogate Judge of Probate for said County, and have there then this Writ. Given under my hand this _____ day of _____ 184__.

A. F., Surrogate.

O. P., Register.

Table of Fees to be taken and allowed in the Surrogate Courts.

FOR THE SURROGATE.

	£
Examining Petition for Letters of Administration or Probate of a Will, and granting Order for the same,	0 6 8
Every Fiat for Appraisers or Bondsmen,	0 2 6
Every Order not herein specially provided for,	0 2 6
Certificate endorsed on Will, of the proof thereof,	0 6 8
Certificate endorsed on Will, of Oath to Executors,	0 3 4
For the Probate of a Will or Letters of Administration, where the Estate does not exceed £300,	0 16 8
Where above £300 and not exceeding £1000,	1 3 4
Above £1000,	2 6 8
Signing Warrant of Appraisalment,	0 2 6
Citation, including order for the same,	0 3 4
Every Subpoena, Attachment; Execution or other process, not otherwise provided for, including Order for the same,	0 2 0
Letters <i>ad colligendum</i> ,	0 10 0
Sentence or decree in ordinary cases of granting Licence to sell Real Estate, passing Accounts, or of distribution, &c.	1 3 4
Sentence or decree for Probate of a Will, Letters of Administration, or on granting Licence to sell Real Estate, passing Accounts, or distribution, &c. where there is a contest,	2 6 8
Transmitting Appeal, with statement of reasons,	1 3 4
Taking Testimony in Writing, each Witness, if testimony does not exceed three folios,	0 3 4
Every folio above,	0 1 0
Examining and taxing Costs,	0 2 6
Every Oath,	0 1 0

REGISTER'S FEES.

	£
Filing Petition for Probate of Will or Letters of Administration, and Order of Surrogate thereon,	0 1 0
Entry of Order for Probate or Letters of Administration and every other Special Order not herein otherwise provided for,	0 2 6
For the Probate of a Will or Letters of Administration, where the Estate is under £300,	0 15 0
When above £300 and not exceeding £1000,	1 0 0
All above £1000,	1 0 0
Copy of Will annexed to Probate, per folio,	0 1 0
Registry of Will in Book, per folio,	0 0 9
Preparing Bond of Administration, or on sale of Real Estate, or for payment of Costs on Appeal,	0 6 8
Preparing Citation and Seal,	0 4 0
Each copy thereof to be served,	0 2 0
Preparing Affidavit of service of Citation or other process, or any other necessary Affidavit,	0 1 0
Warrant of Appraisement and Seal,	0 4 0
Filing every Paper, except Vouchers filed with Accounts,	0 0 6
Filing every Account and Vouchers,	0 3 4
All copies of Papers, for first folio,	0 1 0
Every additional folio,	0 0 6
Certificate under the Seal, including the Seal,	0 5 0
Entry of every Order or Decree in the Registry Book, not specially provided for, per folio,	0 0 9
For every inspection of original Will, and attending the party inspecting the same,	0 2 0
Every search in every other case,	0 1 0
Preparing Subpoena and Seal,	0 2 6
Every Copy or Ticket required,	0 1 0
Entry of Caveat or Appeal,	0 3 4
Preparing every Execution, Attachment or other process not specially provided for,	0 2 0
Certificate of Licence for sale of Real Estate,	0 5 0

PROCTOR AND ADVOCATE'S FEES.

	£
Taking instructions from Client to commence or defend any proceeding in a Surrogate Court,	0 15 0
Preparing every Petition, Allegation or other Paper necessary to be prepared by him, per folio,	0 1 6
Every additional copy thereof, per folio,	0 0 6
Every necessary attendance on the Surrogate,	0 6 8
Every hearing or argument before the Surrogate not less than half a guinea, nor more than three guineas, at the discretion of the Surrogate.	

Serving every Notice, or other Paper, on each person, 0 1 0

SHERIFF OR OTHER MINISTERIAL OFFICER'S FEES.

£

Serving Citation, or other process, (Subpoena excepted) on each person, 0 2 6

Posting up same in three public places, directed by Surrogate, 0 5 0

Serving Subpoena on each person, 0 1 0

Mileage the same as in other Courts.