

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1844. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1844.

7 Victoria – Chapter 41

An Act further to amend the Law relating to Wills, Legacies, Executors and Administrators, and for the settlement and distribution of the Estates of Intestates. Passed 13th April 1844.

Whereas it is expedient to enlarge the time for granting Licences to sell or lease the Real Estate of any Testator or Intestate, for the payment of debts;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That so much of an Act made and passed in the third year of the Reign of Her present Majesty, intituled *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*, as requires the application by any Executor, Administrator or Creditor of any Testator or Intestate for a license to sell or lease any Real Estate for the payment of debts to be made within three years after the granting of Letters Testamentary or of Administration, be and the same is hereby repealed.

II. And be it enacted, That the Court of Chancery or Surrogate Court, (as the case may be,) may at any time within the period of seven years from the death of the Testator or Intestate, when such death may have taken place after the first day of January in the year of our Lord one thousand eight hundred and forty, or within twelve years after the death of any Testator or Intestate, when such death may have taken place previous to the said first day of January in the year one thousand eight hundred and forty, on the application of the Executor, Administrator or Creditor of such Testator or Intestate, grant a license for the sale or leasing of the Real Estate of such Testator or Intestate for the payment of debts in the manner prescribed in and by the said recited Act: Provided always, that no such License granted after the expiration of three years from the death of the Testator or Intestate shall extend to or in any wise affect the title to any Real Estate which any purchaser for a valuable consideration may have or claim, by, through or under any conveyance made by any Devisee or Heir of such Testator or Intestate, and duly registered agreeably to the directions of the Acts relating to the Registry of Deeds, before the granting of such License: And provided also, that no License shall be in force for a longer period than two years from the time of granting the same, and any sale or lease of Real Estate made thereunder after such License shall have expired, shall be null and void.

III. And whereas actions are frequently brought against Executors or Administrators before the true state of the assets of or demands against the Estate can be ascertained, and it is expedient that in such cases time shall be given to plead to such actions; Be it therefore enacted, that when any action shall be brought in any Court of Law against any Executor or Administrator as such, and it shall be made to appear by affidavit or otherwise to the satisfaction of such Court, or if in vacation, any Judge thereof, that such Executor or Administrator requires further information in regard to the true state of the affairs of the Estate, whether as regards the assets of or outstanding debts against such Estate, in order to enable him to plead to such action the proper defence or

answer, it shall be lawful for such Court, or any Judge, in vacation, to make an order for such further time to plead as may by such Court or Judge be considered reasonable, and if need be, the same again further to extend.

IV. And whereas in and by the thirty third section of the said recited Act, it is amongst other things provided, that debts shall be paid in the order of classes, and that all debts of the same class shall be paid in equal proportions, and doubts have arisen whether an Executor or Administrator can in any case avail himself of the want of notice of any demand at the time of paying any such debts or proportion thereof, as a legal defence or answer to an action for such demand; Be it therefore enacted, that when after the expiration of eighteen months from the date of the Letters Testamentary or of Administration, any Executor or Administrator shall have applied the assets in his hands to be administered to the payment of all such debts or any proportion thereof, of which he had notice at the time of such payment, and any Creditor shall afterwards bring an action against such Executor or Administrator for the recovery of any demand against the Estate, it shall be a good defence or answer to such action that such assets have been so applied before such Executor or Administrator had any notice of such; demand; provided that such defence or answer be specially pleaded, on the trial of which issue the proof of such notice having been given, shall lie on the Plaintiff; and provided also, that the Plaintiff may, as in other cases, take judgment for such demand or any part thereof, to be levied of future assets in the manner and with the like effect as provided for in the thirty fourth section of the said recited Act.

V. And whereas it is necessary to give further remedy in order to compel an Executor or Administrator to render an account of his Administration; Be it therefore enacted, That if any Executor or Administrator shall neglect or refuse to render an account of his Administration, after being duly cited for that purpose, as provided for in the thirty fifth section of the said recited Act, he shall forfeit and pay the sum of five pounds every month from and after the time appointed by such citation, or any further time that may be allowed by the Surrogate for such account to be rendered, until he shall render such account; every such forfeiture to be had and recovered by action of debt in the Inferior Court of Common Pleas in the same County, in the name and for the use of any Heir, Legatee or Creditor of the Testator or Intestate, who shall first sue and prosecute for the same.

VI. And whereas in cases of small Estates, it is desirable to lessen and limit the fees payable to the Surrogate Judge and Register of Probates respectively; Be it therefore enacted, That when the Estate does not exceed one hundred pounds, and there shall be no contest, the fees of the Surrogate Judge shall be twenty shillings and no more; and when the Estate does not exceed two hundred pounds, and there shall be no contest, his fees shall be thirty shillings and no more; and in such cases the same fees shall be payable to the Register and no more; and in all cases where the Estate does not exceed two hundred pounds, if license be granted by the Surrogate Judge for the sale of the real Estate belonging to the same, and there shall be no contest, the fees of the Surrogate Judge for all proceedings relating to the application for and the granting of such license shall not exceed twenty shillings, and for the Register the like sum and no more, any thing in the said recited Act to the contrary notwithstanding.