Laws of Her Majesty's Province of Newfoundland, passed in the year 1864. J. C. Withers, Queen's Printer, 1864.

27 Victoria – Chapter 13

An Act for the Amendment of the Law with respect to Wills in this Island. (Passed 13th April, 1864.)

Be enacted by the Governor, Legislative Council, and House of Assembly, in Session convened, as follows:—

I. No will shall be valid unless it be made in writing, and unless it be either in the hand-writing of the testator, and signed by him, or if not so written and signed, be signed by him in the presence of at least two witnesses, who shall, in the presence of the testator, sign the same as witnesses; and in case such will shall be made by a marksman, unless the same shall have been first read over to or by the testator in the presence of the said witnesses; Provided always, that any seaman or fisherman, being at sea, may dispose of his property in the same manner as he might have done before the passing of this Act.

II. No will shall be valid if made by a person under the age of seventeen years.

III. No appointment made by will, in exercise of any power, shall be valid unless the same be executed in manner hereinbefore required; and every will so executed shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

IV. Every will executed in manner hereinbefore required shall be valid without any publication thereof.

V. That if any person who shall attest the execution of a will, shall, at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

VI. No devise, bequest, legacy, estate, interest, gift or appointment, to any person, or to the husband or wife of any person, who shall attest the execution of any will, shall be null and void if the will can be sufficiently proved, according to the provisions hereinbefore contained, without proof by such person of the execution thereof; but where the will cannot be sufficiently proved without the evidence of such person, he or she shall be admitted as a witness to prove the execution, or the validity, or invalidity, of such will, and in such case the devise, bequest, legacy, estate, interest, gift or appointment, in his or her favor, shall be null and void.

VII. That no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.
VIII. That every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the property thereby appointed would not, in

default of such appointment, pass to his or her executor or administrator, or the person entitled as his or her next of kin, under the statute of distributions.

IX. That no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

X. That no will, or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing, declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying, the same by the testator, or by some person in his presence, and by his direction, and with the intention of revoking the same.

XI. That no obliteration, interlineation, or other alteration, made in any will after the execution thereof, shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be made and executed in manner herein before required; but such will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator, or such signature and the subscription of the witnesses, as the case may be, be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration; and written at the end, or some other part of the will, or attached thereto.

XII. That no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shewn.

XIII. That no conveyance or other act made or done subsequently to the re-execution of a will of, or relating to, any property therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such property as the testator shall have power to dispose of by will at the time of his death.

XIV. That every will shall be construed with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

XV. That a general devise or bequest of the property, of any kind, of the testator, or of such property in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any property to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

XVI. That in any devise or bequest of any property, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his life time, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the life time, or at the time of the death, of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior quasi estate tail, or of a preceding gift being without any implication arising from such words or limitation of a quasi estate tail to such person or issue, or otherwise; Provided that this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description, required for obtaining a vested estate by a preceding gift to such issue.

XVII. That where any person being a child, or other issue of the testator, to whom any property shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall, be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person bad happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

XVIII. This Act shall not extend to any will made prior to or within six months after the passing of this Act.