



### CHAPTER 73.

An Act to Consolidate and Amend the Law relating to Probates and Letters of Administration, to the Duties and Powers of Executors and Administrators and to the Administration and Distribution of Intestate Estates.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

#### *Short Title.*

1. This Act may be cited as the “Administration Act.”

Short title.

#### *Interpretation.*

2. In the construction of this Act, unless the context be inconsistent with the meaning hereby assigned—

“Will” shall comprehend “testament” and all other testamentary instruments of which probate may now be granted:

“Administration” shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes:

“Matters and causes testamentary” shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration:

“Common form business” shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations in contentious cases when the contest is terminated, and all business of a non-contentious nature in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration:

- "The Court." "The Court" shall mean the Supreme Court of British Columbia or any Judge thereof, and shall include the County Court, or a Judge thereof, in cases where that Court has jurisdiction:
- "Testator." "Testator" shall mean and comprehend the person making a will, whether such person be male or female:
- "Intestate" or "person dying intestate." The expression "intestate" or "person dying intestate" shall mean and comprehend, according to the context, an estate of a person (whether male or female) dying without a will, and shall also include a person (whether male or female) dying without a will:
- "Proceedings." "Proceedings" shall mean some matter or proceeding had or taken within the meaning of section 3 of this Act, whether according to its exact or intended form or not:
- "Registrar." "Registrar" shall include the Registrar of the Court and every District or Deputy Registrar, or any person for the time being acting in the capacity of Registrar or District or Deputy Registrar. 20 & 21 Vict. (Imp.), c. 77, s. 2.

Proceedings to be intituled "In Probate." Rules and practice of Supreme Court to apply to proceedings under this Act.

**3.** All proceedings in Court in respect of any of the matters dealt with by this Act shall be intituled "In Probate"; and be governed by the Rules of Court and practice of the Court in respect of pleading, amendment, evidence, discovery, trial, appeals, and procedure generally, save where otherwise provided by such Rules, or by this Act:

(a.) All original wills, wherever proved in the Province, shall be forwarded to the Registrar of the Supreme Court at Victoria for safe custody, after an examined copy thereof shall have been first deposited and filed in the office or registry where proved. 20 & 21 Vict. (Imp.), c. 77, s. 24, et seq.

#### *Administration.*

Personal estate and effects of intestate to vest in the Court until grant of administration.

**4.** From and after the decease of any person dying intestate, and until administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the Court, subject only to the power of any Court of competent jurisdiction to grant administration in respect thereof. 21 & 22 Vict. (Imp.), c. 95, s. 19.

The administrator chargeable to pay debts as executors.

**5.** After the death of a person dying intestate the administrator appointed by the Court, or a Judge thereof, shall pay the debts due by the intestate as far as the goods of the deceased will extend, in such sort as the executor of the same party would have been bound if he had made a will. 13 Edw. 1, st. 1, c. 19 (Westr. 2nd, A. D. 1285).

Grant of administration to relate back to time of death of intestate.

**6.** For the purposes of this Act an administrator of the estate of a deceased person shall be deemed to be administrator as if there had been no interval of time between the death of the deceased and the grant of administration. 3 & 4 Will. 4, c. 27, s. 6.

7. Where any person dies intestate, or the executor named in any will refuses to prove the same, it shall be lawful for the Court to grant the administration of the personal estate of the testator, or of the intestate, as the case may be, to the widow or husband of the testator or intestate, or may grant the administration to any one or more of the next of kin, or to such widow or to such husband, jointly with one or more of the next of kin, as to the Court shall seem expedient: Provided always, that where the executors named in a will refuse to prove the same, the administration to be thereupon granted by the Court shall be administration cum testamento annexo, and the will of the deceased in such testament expressed shall be performed and observed; and any administrator so appointed by the Court shall have the like powers as an executor to demand or to recover by an action or otherwise payment of any debts due to the intestate and also to administer his estate, and shall in respect thereof have the like responsibilities as an executor, if appointed, would have had. 31 Edw. 3, st. 1, c. 11; 21 Hen. 8, c. 5, & 22 & 23 Car. 2, c. 10, s. 9.

To what persons administration may be granted.

8. Where a person dies intestate as to his personal estate, or leaves a will affecting personal estate but without having appointed an executor willing and competent to take probate; or where the executor at the time of the death of such person resides out of this Province, and it appears to the Court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased or of other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part thereof, other than the person who, but for this section would have been entitled to a grant of administration, it shall be lawful for the Court, in its discretion, to appoint such person as it shall think fit to be such administrator, upon his giving such security as the Court shall direct; and every such administration may be limited, or upon condition or otherwise, as the Court shall think fit. 20 & 21 Vict. (Imp.), c. 77, s. 73.

Discretionary power as to appointment of administrator in certain cases.

9. Pending any action touching the validity of a will, or for obtaining, recalling or revoking any probate or any grant of administration, the Court may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the control of the Court, and shall act under its direction.

Administration pendente lite.

(1.) If in any action or other proceeding before the Court it shall appear to the Court that any deceased person who was interested in the matters in question has no legal personal representative, the Court may either proceed in the absence of such representative or appoint

Court may proceed in any action without representative of deceased person, or may appoint one.

some person to represent such estate for the purposes of such action or proceeding, on such notice to such person or persons as the Court shall think fit, either specially or generally, by public advertisement or otherwise; and the order so made by the Court, and every order consequent thereon, shall bind the estate of such deceased person in the same manner as if his legal personal representative had been a party to the action or proceeding and had appeared and submitted his interests to the protection of the Court. 15 & 16 Vict. (Imp.), c. 86, s. 44, & 20 & 21 Vict. (Imp.), c. 77, s. 70.

Special administration to creditor, legatee, or next of kin where executor or administrator is out of the jurisdiction.

**10.** At the expiration of twelve calendar months from the death of any testator, or of any person deceased intestate, if the executor to whom probate of the will, or the administrator to whom administration of the estate shall have been granted, is then residing out of this Province, the Court may, upon the application of any creditor, next of kin or legatee, upon an affidavit setting forth the capacity in, and the grounds upon which such applicant applies, and that delay is being caused in the administration of the estate of such testator or intestate, owing to his absence from this Province, grant to such applicant special administration of the estate of such testator or intestate, either general or limited, and upon such terms as to notice and security as to the Court shall seem meet. The provisions hereof shall not be construed so as to abridge the powers of the Court as defined in any of the preceding sections. 38 Geo. 3 (Imp.), c. 87, s. 3; 20 & 21 Vict. (Imp.), c. 77, s. 74, & 21 & 22 Vict. (Imp.), c. 95, s. 18.

Court may appoint special administrator to collect outstanding debts.

**11.** It shall be lawful for the Court, pending any application for the grant of special administration under the preceding section, to appoint, if needful, some person to collect any debts or effects due to the estate, and to give discharges for the same, provided that such person shall give such security as the Court may order for the proper discharge of his duties. 38 Geo. 3, c. 87, s. 4.

Special administrator shall have the same power as an administrator durante minore ætate.

**12.** The person to whom administration is granted under section 10 of this Act shall have the like powers as an administrator appointed pending the minority of the next of kin. 38 Geo. 3, c. 87, s. 7.

Return of executor.

**13.** If any executor capable of acting and who shall have left the jurisdiction, shall return thereto and shall become resident therein, when an application under section 10 hereof is pending, such executor shall be made a party to the application, and the costs incurred by granting administration under the said section shall be in the discretion of the Court. 38 Geo. 3, c. 87, s. 5.

Administration with the will annexed where the sole executor is an infant.

**14.** Where an infant is sole executor under a will, administration with the will annexed, either general or limited, and upon such terms as the Court may direct, shall be granted to the guardian of such infant or to such person as the Court shall think fit, until such infant

shall have attained the age of twenty-one years, at which period, and not before, probate of the will shall be granted to him. 38 Geo. 3 (Imp.), c. 87, ss. 6 & 7.

**15.** Where the next of kin of any person deceased intestate is or are under the age of twenty-one years, administration, either general or limited, and either solely or jointly with any other person and upon such terms as to security and otherwise as the Court may direct, may be granted to such person during the minority of the next of kin. 38 Geo. 3 (Imp.), c. 87, ss. 6 & 7.

Administration durante minore ætate of the next of kin.

**16.** After any grant of administration, no person shall have power to institute any action, or otherwise act as executor of the deceased, as to the estate comprised in or affected by such grant, until such grant shall have been revoked. 20 & 21 Vict. (Imp.), c. 77, s. 75.

After grant of administration no person to have power to sue as an executor, etc.

**17.** All second and subsequent grants of probate or administration shall be made in the Registry where the original will is registered or the original grant of administration has been made, or in the Registry to which the original probate or grant of administration may have been transmitted; and in respect of such second or subsequent grant of probate or administration made or to be made in a Registry, it need not appear by affidavit that the testator or intestate had a fixed place of abode within the District, County or Registry in which the application is made. 21 & 22 Vict. (Imp.), c. 95, s. 20.

Second and subsequent grants to be made where the original will or the original letters of administration are deposited.

**18.** Every person to whom administration is granted shall enter into a bond, together with one or more surety or sureties as the Court shall think fit, made in favour of such person and drawn in such form as may be directed by the Court or a Judge or by Rules of Court, conditioned for the making of a true inventory and account of, including the disposition thereof, of the chattels and credits which have come into his hands or under his control under such grant; and also conditioned for collecting and administering the personal estate of the deceased: Provided that nothing herein contained shall be construed to require any Official Administrator acting within the limits within which he holds office to give any security other than that by law required. 20 & 21 Vict. (Imp.), c. 77, s. 81, & 22 & 23 Car. 2, c. 10, s. 2,

Security to be furnished in respect of every grant of administration.

**19.** Such bond shall be in a penalty of double the amount under which the estate of the deceased shall be sworn, unless the Court, which it may do, shall direct the same to be reduced; and the Court may also direct that more bonds than one shall be given, so as to limit the liability of any surety. 20 & 21, Vict. (Imp.), c. 77, s. 82.

Penalty in bond.

**20.** The Court may, on application by summons and on being satisfied that the condition of any such bond has been broken, order the Registrar, or person to whom, pursuant to the order of the Court,

Power of Court to assign bond.

such bond has been made, to assign the bond to any person named in such order; and such person, his executor or administrator, may thereafter sue on the said bond in his own name or as such executor or administrator, as the case may be, and he shall be entitled to recover thereon as trustee, or for the benefit of all persons interested, the amount recoverable in respect of any breach of the condition of the bond. 20 & 21 Vict. (Imp.), c. 77, s. 83.

*Revocation.*

Revocation of temporary grants not to prejudice actions or suits.

**21.** Where, before the revocation of any temporary administration, any proceedings have been commenced by or against any administrator to whom the grant of such temporary administration has been made, the Court in which such proceedings are pending may, after revocation, order that a suggestion be made upon the Record of the revocation of such administration, and of the grant of probate or administration, which shall have been consequently made, and that the proceedings shall be continued in the name of the new executor or administrator, in like manner as if the proceedings had been originally commenced by or against such new executor or administrator, but subject to such terms as the Court may direct. 20 & 21 Vict. (Imp.), c. 77, s. 76.

Payments under revoked probates or administrations to be valid.

**22.** Where any probate or administration is revoked, all payments bonâ fide made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him, which the person to whom probate or administration shall be afterwards granted might have lawfully made. 20 & 21 Vict. (Imp.), c. 77, s. 77.

Persons making payments under grants made under this Act, protected.

**23.** All persons making or permitting to be made any payment or transfer, bonâ fide, upon any probate or letters of administration granted in respect of the estate of any deceased person, shall be indemnified and protected in so doing, notwithstanding any defect or irregularity affecting the validity of such probate or letters of administration. 20 & 21 Vict. (Imp.), c. 77, s. 78.

*Caveats.*

Caveats.

**24.** Caveats against the granting of probates or administrations may be lodged in any Registry of the Court, and immediately upon a caveat being lodged in any Registry the Registrar shall forward an attested copy thereof to each of the other Registries of the Court, to be entered among the caveats in such Registry. 20 & 21 Vict. (Imp.), c. 77, s. 53.

*Renunciation.*

Rights of an executor renouncing probate to cease as if he

**25.** Where any person renounces probate of the will of which he is appointed an executor, the rights of such person in respect of the

executorship shall wholly cease; and the representation to the testator and the administration of his effects shall and may, without any further renunciation, devolve in like manner as if such person had not been appointed executor. 20 & 21 Vict. (Imp.), c. 77, s. 79.

**26.** Whenever an executor appointed in a will survives the testator, and dies without having taken probate, and whenever an executor named in a will is cited to take probate and does not appear, the right of such person in respect of the executorship shall wholly cease; and the representation to, and the administration of, the testator's effects shall, without formal renunciation, devolve as if such person had not been appointed executor. 21 & 22 Vict. (Imp.), c. 95, s. 16.

had not been named in the will.

An executor not acting or not appearing to a citation to be treated as if he had renounced.

#### *Receivers.*

**27.** The Court may appoint any administrator, to whom a grant of administration shall have been made or any other person, to be receiver of the real estate of any deceased person pending any action touching the validity of any will of such testator by which his real estate may be affected; and such receiver shall have such power to receive the rents and profits of such real estate, and such powers of letting and managing it, as the Court may direct. 20 & 21 Vict. (Imp.), c. 77, s. 71.

Receiver of real estate, pendente lite.

**28.** The Court may, in such form as it may direct, require security by bond, with or without sureties, from any receiver appointed by it; and the Court may, on application by motion, or petition, in a summary way, order the Registrar to assign such bond to some person to be named in such order; and such person, his executors, or administrators, shall thereupon be entitled to sue on the said security or put the same in force in his name or their names, and shall be entitled to recover thereon, as trustee or trustees for all persons interested, the amount due in virtue thereof. 21 & 22 Vict. (Imp.), c. 95, s. 21.

Security to be given by receiver.

**29.** The Court may direct that administrators and receivers appointed pending suits involving matters testamentary, shall receive out of the personal and real estate of the deceased, such reasonable remuneration as it thinks fit. 20 & 21 Vict. (Imp.), c. 77, s. 72.

Remuneration to administrators and receivers pendente lite.

#### *Evidence and Production of Documents.*

**30.** The Court may, on summons, motion, or petition, in a summary way, whether any action or proceeding be pending or not with respect to any probate or administration, order any person to produce and bring into any registry any writing of a testamentary character which may be shown to be in such person's control or possession; and if it be not shown that any such writing is in such person's possession or control, that there are reasonable grounds for believing that he has a knowledge of any such writing, the Court may direct such person to attend for the purpose of being examined in open Court, or in

Power to order production of any instrument purporting to be testamentary.

Chambers, or before an examiner, or upon interrogatories respecting the same, and such person shall be bound to answer all lawful questions, or lawful interrogatories, and, if so ordered, produce such writing; and such person shall be subject to the like process of contempt in case of default in not attending the Court, or in Chambers, or before the Examiner, or in not answering such questions or interrogatories, or not bringing in such writing as he would have been subject to in case he had been a party to an action and had made such default; and the costs of any such summons, motion, petition, or other proceeding shall be in the discretion of the Court. 20 & 21 Vict. (Imp.), c. 77, s. 26.

Probate or office copy to be evidence of the will in actions concerning real estate save where the validity of the will is put in issue.

**31.** In any action where, according to law, it would be necessary to produce and prove an original will in order to establish a testamentary disposition affecting real estate, the party intending to prove such testamentary disposition may give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be given, notice that he intends at such trial or other proceeding to give in evidence as proof of the testamentary disposition the probate of the said will or the letters of administration with the will annexed, or an office copy thereof, certified as such by the Registrar of the Court; and in every such case such probate or letters of administration, or office copy, respectively, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proven in solemn form or have been otherwise declared valid in a contentious action or matter, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such testamentary disposition. 20 & 21 Vict. (Imp.), c. 77, s. 64.

Costs of proof of will.

**32.** Where in such action, the original will shall be produced and proved, the costs incidental thereto shall be in the discretion of the Court. 20 & 21 Vict. (Imp.), c. 77, s. 65.

Official copy of whole or part of will may be obtained.

**33.** An office copy of the whole or any part of a will, or a certificate of the grant of any letters of administration, may be obtained from the Registry where the will has been proved or the Registry to which the will may have been transmitted, or the administration granted, on the payment of the fees fixed by Rules of Court. 20 & 21 Vict. (Imp.), c. 77, s. 69.

Registrar may issue subpoenas to produce papers, etc.

**34.** A Registrar of any Registry may, whether any action or other proceeding be pending or not in Court, issue a subpoena requiring any person to produce and bring into his Registry, or such place as in the subpoena may be directed, any writing of a testamentary character, which is shown to be in the possession, or under the control of such person; and such person, upon being served with the said subpoena,

shall be bound to produce and bring in such writing, and in default thereof shall be subject to the like process of contempt as if he had been a party to an action and had been ordered by the Court or a Judge to produce and bring in such writing. 21 & 22 Vict. (Imp.), c. 95, s. 23.

*Proof in Solemn Form.*

**35.** Where proceedings are taken for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where, in any other contentious cause or matter the validity of a will is disputed, unless in such cases the will affects only personal estate, the heir-at-law, devisee, or other person having or pretending interest in the real estate affected by the will shall, subject to the Rules of Court, be cited to see proceedings, or be otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become a party or intervene for his respective interest in such real estate, subject to such rules, and to the discretion of the Court. 20 & 21 Vict. (Imp.), c. 77, s. 61.

Where a will affecting real estate is proved in solemn form or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

**36** Where probate of a will is granted after proof in solemn form, or where the validity of the will is otherwise declared by the judgment or order in a contentious cause or matter, the probate, judgment or order respectively, shall enure to the benefit of every person interested in the real estate affected by such will; and the probate of such will, or the letters of administration with such will annexed, or copy thereof certified under the seal of the Court, or an office copy of such will or of the probate thereof, shall, in all actions and proceedings affecting real estate (save proceedings by way of appeal, or for the revocation of such probate or administration) be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked on the ground of the invalidity of the will, or the invalidity of the will is otherwise declared by judgment or order, such judgment or order shall enure for the benefit of the heir-at-law or other persons against whose interest in real estate such will might operate; and such will shall not be received in evidence in any action or proceeding in relation to real estate, save in any proceeding by way of appeal from such judgments or orders. 20 & 21 Vict. (Imp.), c. 77, s. 62.

Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the Court to bind all persons interested in the real estate.

**37.** Nothing herein contained shall make it necessary to cite the heir-at-law or any other person having or pretending interest in the real estate of a deceased person, unless it be satisfactorily shown to the Court that such deceased person was, at the time of his decease, entitled to or had power to appoint by will some real estate beneficially, or in any case where the will propounded, or of which the

Heir in certain cases not to be cited and where not cited not to be affected by probate.

validity is in question, would not in the opinion of the Court, although established as to personalty, affect real estate; but in every such case, and in any other case in which the Court may, with reference to the circumstances of the property of the deceased or otherwise think fit, the Court may proceed without citing the heir or other persons interested in real estate: Provided that the probate, judgment or order of the Court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made a party to the proceedings, or derives title under or through a person so cited or made a party. 20 & 21 Vict. (Imp.), c. 77, s. 63.

Part of the executors who take upon them the charge of a will may sell, etc., any lands devised by the testator to be sold.

**38.** Where a testator by his will devises lands and hereditaments to executors therein named upon trust for sale, and any of such executors shall renounce probate of such will, and the remaining executors prove the will and obtain probate thereof, all bargains, sales, grants and conveyances of such lands and hereditaments made and executed by the executor or executors obtaining probate of the will shall be as effectual as if every executor named in such will had joined therein and had executed the same. 21 Hen. 8 (Imp.), c. 4.

*Transmission of Rights and Liabilities.*

Executors and administrators' powers to bring or defend actions in nature of old common law Writs of Account.

**39.** Every executor and administrator shall have the like powers to prosecute and defend any action in the nature of the common law action or Writ of Account as his testator or the deceased intestate would have had if living. 13 Edw. 1, st. 1, c. 23 (Westr. the 2nd, A.D. 1285).

Executors may sue for injuries to real estate of deceased, and be sued for injuries to property, real or personal, caused by their testator.

**40.** An action for trespass, or in the nature of trespass on the case, may be maintained by an executor or administrator for any injury done to the real estate of the deceased in his lifetime, provided that such injury shall have been done within six calendar months before the death of the deceased, and also that such action be brought within one year after the death of such deceased person; and the damages, when recovered, shall be part of the personal estate of the deceased; and an action of trespass, or in the nature of trespass on the case, may be maintained against any executor or administrator for any injury done by the deceased in his lifetime to another in respect of the latter's property, real or personal, provided that such injury shall have been done within six calendar months before the death of such deceased, and that such action is brought within six calendar months after such executor or administrator shall have undertaken the administration of the estate of the deceased; and the damages to be recovered shall be payable in like order of administration as the simple-contract debts of the deceased. 3 & 4 Will. 4, c. 42, s. 2.

Actions on simple contracts against executors and administrators.

**41.** An action of debt on simple contract may be brought against an executor or administrator. 3 & 4 Will. 4, c. 42, s. 14.

**42.** Any executor or administrator of any lessor or landlord may distrain upon the lands demised for any term, or at will, for arrears of rent due to such lessor or landlord when living. 3 & 4 Will. 4, c. 42, s. 37.

Executors of deceased lessor may distrain for rent due to latter when living.

**43.** Such arrears may be distrained for after the determination of such term or lease at will, in the same manner as if such term or lease had not been determined; provided that such distress be made within six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears are due: Provided also that all the provisions in the several statutes relating to distress for rent shall be applicable to the distresses so made. 3 & 4 Will. 4, c. 42, s. 38.

Arrears may be distrained for within six months after determination of term.

**44.** Every executor and every administrator with the will annexed of a testator, as the case may be, shall be entitled to bring and maintain an action, and recover damages and costs for any trespass done to the estate, goods, credits or effects of such testator during his lifetime, in like manner as such testator could, if living, have brought and maintained such action. 4 Edw. 3 (Imp.), c. 7, & 15 Edw. 3, c. 5.

Executors to have right of action in cases of trespass and damage taking place in life-time of their testators.

**45.** Executors of executors shall have all the powers, rights, rights of action, and liabilities of their immediate testators in regard to the estates and effects of the first testators. 25 Edw. 3, st. 5, c. 5.

Rights, powers and liabilities of executors of executors.

**46.** Where any judgment shall be had or obtained by any executor or administrator, an administrator de bonis non may sue forth a scire facias and take execution upon such judgment. 17 Car. 2, c. 8.

Administrator de bonis non may have sci. fa. on judgment obtained by executor or administrator.

**47.** Actions in the nature of common law action of account may be brought and maintained against the executor or administrator of any guardian, bailiff or receiver, and also by one joint-tenant or tenant in common, his executor or administrator, against the other as bailiff for receiving more than comes to his just share or proportion, and against the executor or administrator of such joint-tenant or tenant in common; and the Registrar, Deputy Registrar or other person appointed by the Court to inquire into such account, is hereby empowered to administer an oath and examine the parties touching the matters in question, and such Registrar or other person shall be entitled, for taking such account, to receive such allowance as the Court or a Judge shall order from such party as the Court or Judge may direct. 4 Anne, c. 16, & see Bacon's Ab. Title "Accompt."

Action of account given against executors and administrators of bailiffs and against joint tenants and tenants in common, etc.

**48.** Every executor or administrator of any person, who as executor or administrator in his own wrong has converted to his own use the personal estate of any testator or deceased intestate, shall be liable to account for, replace, dispose of, and distribute, according to law, the said personal estate so converted, so far as the estate of such executor or administrator in his own wrong shall thereto extend, and shall come

Estate and effects of deceased executors or administrators de son tort rendered liable to account and recoup.

into the hands or control of such executor or administrator. 30 Car. 2, st. 1, c. 7, & 4 Wm. & M., c. 24, s. 12.

Devastavit against executors or administrators of executors or administrators by right.

**49.** The executor or administrator of any person who, as executor under a will or as administrator of an intestate, has wasted or converted to his own use any part of the estate of his testator, or of such intestate, shall be liable and chargeable in the same manner as such person should or might have been if living. 4 Wm. & M., c. 24, s. 12.

*Fraudulent Administration.*

By fraudulent administration of intestate's goods, the party shall be charged as executor of his own wrong.

**50.** Every person who shall obtain, receive and have any goods or debts of any person dying intestate, or a release or discharge of any debt or duty that belonged to the intestate by wrongfully or fraudulently procuring the grant of administration to some person of mean estate or person not of kin to the intestate, or without such valuable consideration as shall amount to the value of the same goods or debts, or near thereabouts (except it be in or towards satisfaction of some just and principal debt of value of the same goods or debts to him owing by the intestate, at the time of his decease) shall be chargeable as executor of his own wrong; and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by any administrator the grant to whom is wrongfully or fraudulently procured as aforesaid will satisfy, deducting nevertheless, to and for himself allowance of all just debts due and principal debts upon good consideration without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought by law to have and pay. 43 Eliz., c. 8.

Allowance of just debts and other lawful payments.

*Residuary Personality.*

Undisposed of residuary personality to be distributed in manner provided for the distribution of personality on an intestacy.

**51.** When any person shall die, having by his will or any codicil appointed an executor, such executor shall be deemed to be a trustee for the person who would be entitled to the estate under the provisions hereof relating to distribution in respect of any residue not expressly disposed of, unless it shall appear by such will or codicil, if any, that such executor was intended to take such residue beneficially. But nothing herein contained shall affect or prejudice any right to which any executor, if this Act had not been passed, would have been entitled in cases where there is not any person who would be entitled to the testator's estate in manner aforesaid. 1 Will. 4 (Imp.), c. 40, ss. 1 & 2.

*Accounts.*

Administrator compellable to account only to persons interested.

**52.** No Administrator shall be cited to render an account of the personal estate of his intestate (otherwise than by an inventory or inventories thereof) unless it be at the instance of some person acting in behalf of a minor, or having a demand out of such personal estate as a creditor or next of kin. 1 Jac. 2 (Imp.), c. 17, s. 6.

*Distribution.*

**53.** Every Court or Judge or other person who, by this Act, is enabled to make distribution of the surplusage of the estate of any person dying intestate, shall distribute the whole surplusage of such estate in manner following, that is to say :—

- (1.) One third part of the surplusage to the wife of the intestate, and all the residue by equal portions amongst the children of such person 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 who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his lifetime by portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made : Distribution of surplusage of intestate estates. Wife and children.
- (2.) If any child or children shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his lifetime 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 shall be distributed to such child or children as have estate by settlement, or have been advanced by portion in the lifetime of the intestate, as shall make the estate of all the said children equal, as near as can be estimated : Equalization of children's shares.
- (3.) If there be no children of the intestate, or legal representatives of them, then one moiety of the surplusage shall be allotted to the wife of the intestate, and the remainder thereof shall be distributed equally to every of the next of kin of the intestate who are in equal degree and those who legally represent them : Wife and next of kin.
- (4.) If there be no wife, the whole of the surplusage shall be distributed equally amongst the children ; and if there be neither wife nor children, to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid : Children and next of kin. Next of kin alone.
- (5.) If after the death of a father any of his children shall die intestate without wife or children in the lifetime of the mother, every brother and sister, or the representatives of them, shall have an equal share with her. 22 & 23 Car. 2, c. 10, ss. 5, 6 & 7, & 1 Jac. 2, c. 17, s. 7. Brother and sister of intestate to share equally with mother.

**54.** No distribution of the surplusage of the estate of an intestate shall be made until one year after the death of such intestate. 22 & 23 Car. 2, c. 10, s. 8. No distribution until one year after intestate's death.

**55.** Every person to whom any share shall be allotted upon any such distribution shall enter into a bond, with one or more surety or sureties as the Court shall think fit, made in favour of the person and Security for payment of debts appearing after a distribution.

in manner prescribed by Rules of Court or by the Court or a Judge, upon condition that if any debt owing by the intestate shall be afterwards recovered by action or otherwise made to appear to be due, he shall refund to the administrator his ratable part of such debt and of the costs of action and charges of the administrator by reason of such debt, out of the share so as aforesaid allotted to him, thereby to enable the said administrator to pay and satisfy the said debt so discovered after the distribution made as aforesaid. 22 & 23 Car. 2, c. 10, s. 8.

*General Orders.*

Rules and regulations and tariff of fees to be prepared by Lieut.-Governor in Council.

**56.** The Lieutenant-Governor in Council may from time to time by Order in Council, which shall be published in the British Columbia Gazette, make, amend, or annul Rules of Court for the purpose of carrying out this Act, and for prescribing fees to be payable to the Crown in respect of all matters connected therewith. *See* 20 & 21 Vict. (Imp.), c. 77, s. 30.

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VICTORIA, B. C.:

Printed by RICHARD WOLFENDEN, Printer to the Queen's Most Excellent Majesty.  
1897.