

Intestate Estates.

An Act for the Settlement and Distribution of the Estates of Intestates.

WHEREAS Estates in these Plantations do consist chiefly of Lands, which have been subdued and brought to improvement by the Industry and Labour of the Proprietors, with the Assistance of their Children; the Younger Children generally having been longest, and most serviceable unto their Parents in that behalf, who have not Personal Estate to give out unto them in Portions, or otherwise to recompence their Labour.

Persons seized of Lands in Fee Simple may dispose of the same by Will.

Be it therefore Enacted and Ordained by the Governour, Council and Representatives, Convened in General Assembly, and by the Authority of the same, That every Person lawfully seized of any Lands, Tenements or Hereditaments within this Province, in his own proper right in Fee Simple, shall have power to give, dispose, and devise as well by his Last Will and Testament in Writing, as otherwise by any act executed in his Life: All such Lands, Tenements, and Hereditaments to and among his Children, or others, as he shall think fit at his pleasure. And if no such Disposition, Gift, or Devise be made by the Owner of any such Lands, Tenements and Hereditaments, the same shall be subject to a Division, with his Personal Estate, and be alike Distributed according to the rules herein after expressed, for Intestate Estates.

Administration how to be granted.

Distribution.

And when and so often as it shall happen, That any Person dyes Intestate, Administration of such Intestates, Goods, and Estate shall be granted unto the Widow, or next of Kin unto the Intestate, or both as the Judge for Probate of Wills, and Granting Administrations shall think fit, who shall thereupon take Bond with Sureties in manner as is directed by the Statute of the Twenty-second and Twenty-third of Charles the Second. And shall and may proceed to call such Administrators to Account for and touching the Goods of the Intestate; and upon due hearing and consideration thereof (Debts, Funeral, and just expenses of all sorts being first allowed) the said Judge shall, and hereby is fully empowered to order and make a just Distribution of the Surplusage, or remaining Goods and Estate, as well Real as Personal, in manner following: That is to say, One Third part of the Personal Estate to the Wife of the Intestate for ever; besides her Dower or Thirds in the Houses, and Lands during Life; where such Wife shall not be otherwise endowed before Marriage: And all the Residue of the Real, and Personal Estate by equal Portions to and among his Children; and such as shall legally represent them (if any of them be dead) other than such Children, who shall have any Estate by Settlement of the Intestate in his Life time, equal to the others Shares; Children advanced by Settlement, or Portions not equal to the others Shares, to have so much of the Surplusage, as shall make the Estate of all to be equal, except the Eldest Son then Surviving, where there is no Issue of the First born, or of any other Elder Son: Who shall have Two Shares, or a double Portion of the whole:

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whole : and where there are no Sons the Daughters shall Inherit as Coparceners. The Division of the Houses and Lands to be made by Five sufficient Freeholders upon Oath, or any Three of them, to be appointed and Sworn by the Judge for that end ; Unless where all the Parties interessed in any Estate, being legally capable to act, shall Mutually agree of a Division among themselves, and present the same in Writing under their Hands and Seals : in which case such agreement shall be accepted, and allowed for a Settlement of such Estate, and be accounted valid in Law, being acknowledged by the Parties Subscribing before the Judge, and put upon Record.

Provided nevertheless, That where any Estates in Houses and Lands cannot be divided among all the Children without great Prejudice to, or spoiling of the whole ; being so represented and made to appear unto the said Judge, the Judge may order the whole to the Eldest Son, if he accept it, or to any other of the Sons successively, upon his refusal, he paying unto the other Children of the Deceased, their equal and proportionable Parts or Shares of the true value of such Houses, and Lands, upon a just Apprizement thereof to be made by Three sufficient Freeholders upon Oath, to be appointed and Sworn, as aforesaid ; or giving good Security to pay the same in some convenient time, as the said Judge shall Limit, making reasonable allowance in the interim, not exceeding Six per Cent. per Annum. And if any of the Children happen to dye, before he or she come of Age, or be Married, the Portion of such Child deceased shall be equally divided among the Survivors. And in case there be no Children, nor any Legal representative of them, then One Moiety of the Personal Estate shall be allotted to the Wife, of the Intestate for ever : and One Third of the Real Estate for term of Life, the residue both of Real and Personal Estate, equally to every of the next of Kin of the Intestate in equal degree, and those who Legally represent them : No representatives to be admitted among Collaterals after Brothers and Sisters Children. And if there be no Wife, all shall be Distributed among the Children ; and if no Child, to the next of Kin to the Intestate in equal degree, and their Legal representatives, as aforesaid ; and in no other manner whatsoever. And every one to whom any Share shall be allotted, shall give Bond with Sureties before the said Judge of Probates, if Debts afterwards be made to appear, to refund and pay back to the Administrator his or her Rateable Part thereof, and of the Administrators charges ; the Widows Thirds or Dower in the Real Estate at the expiration of her Term, to be alike divided, as aforesaid : Saving to any Person aggrieved at any Order, Sentence or Decree made for the Settlement and Distribution of any Intestate Estate, their right of Appeal unto the Governor, and Council ; every Person so Appealing, giving Security to prosecute the Appeal with effect.

Houses and Lands to be ordered to the Eldest Son, that cannot be divided without damage.

In case there be no Children the Estate to be allotted to the Wife and next of Kin.

Right of Appeal saved.

We it further Enacted by the Authority aforesaid, That if any Executor or Executors of the Will of any Person Deceased, knowing of their being so Named or Appointed, shall not within the space of Thirty days next after the Decease of the Testator, cause such Will to be Proved, and Recorded in the Registers Office of this Province, or present

Executors to cause Probate of Wills to be made in Thirty days.

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Penalty for neglect.

Upon refusal Administration to be committed cum Testamento annexo.

Executors by Wrong.

Appeal.

Judge of Probates to Appoint Guardians.

present the said Will, and declare his or their refusal of the Executorship, every Executor so neglecting of his or her Trust, and Duty in that behalf, without just excuse made and accepted for such delay, shall forfeit the Sum of *Five Pounds per Month*, from and after the Expiration of the said Thirty days; until he or they shall cause Probate to be made of such Will, or present the same, as aforesaid. Every such forfeiture to be had and recovered by Action or Information in the Inferior Court of Pleas in this Province: And to be disposed of, One Moiety thereof to the use of the Poor of the Town where the Deceased Person last dwelt; and the other Moiety to him or them that shall inform, and sue for the same. And upon such refusal of the Executor or Executors, the Judge shall commit Administration of the Estate of the Deceased, *cum Testamento annexo*, unto the Widow, or next of Kin to the Deceased, and upon their refusal, to one or more of the Principal Creditors, as he shall think fit.

And if any person or persons shall alienate or imbezel any of the Goods or Chattels of any person Deceased, before he or they have taken out Letters of Administration, and exhibited a true Inventory of all the known Estate of the Party Deceased: Every person or persons so acting shall stand chargeable, and be liable to the Actions of the Creditors, and other persons grieved, as being Executors in their own wrong. And the Judge shall cause a Citation to be made out unto the Widow, or next of Kin; and upon their neglect of Appearance, or refusal, may commit Administration of any such Estate to some or more of the chief Creditors, if accepted by them, or others, as he shall think fit, upon their refusal.

And it is Enacted by the Authority aforesaid, That the right of Appeal which is saved to any Party grieved at the Sentence of the Judge of Probates in the Settlement or Distribution of any Intestate Estate, shall to all intents and purposes, extend and be taken, and construed to extend to any Order, Decree, or Denial that shall at any time be made and given by the Judge of Probate, referring to the Approbation and Allowance of any Will, grant of Administration, or other matter whatever.

And further it is Enacted and Declared, That the Judge of Probates in this Province, when and so often as there shall be occasion, be and hereby is impowred to allow of Guardians that shall be chosen by Minors, of Fourteen Years of Age; and to Appoint Guardians for such as shall be within that Age, taking sufficient Security of all such Guardians, for the faithful discharge of their Trust, according to Law; and to Accompt either to the Judge, or Minor, when such Minor shall arrive at full Age, or at such other time, as the Judge upon complaint to him made, shall see cause.