

1960

## c 106 Devolution of Estates Act

Ontario

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## CHAPTER 106

**The Devolution of Estates Act****1. In this Act,**Inter-  
pre-  
ta-  
tion

- (a) "court" means the Supreme Court;
- (b) "judge" means a judge of the Supreme Court;
- (c) "mental incompetency" means the condition of mind of a mentally incompetent person;
- (d) "mentally incompetent person" means a person,
  - (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
  - (ii) who is suffering from such disorder of the mind,

that he requires care, supervision and control for his protection and the protection of his property;

- (e) "personal representative" means an executor, an administrator, or an administrator with the will annexed. R.S.O. 1950, c. 103, s. 1, *amended*.

**2.—**(1) All real and personal property that is vested in a person without a right in any other person to take by survivorship, on his death, whether testate or intestate and notwithstanding any testamentary disposition, devolves to and becomes vested in his personal representative from time to time as trustee for the persons by law beneficially entitled thereto, and, subject to the payment of his debts and so far as such property is not disposed of by deed, will, contract or other effectual disposition, it shall be administered, dealt with and distributed as if it were personal property not so disposed of.

(2) This section applies to property over which a person executes by will a general power of appointment as if it were property vested in him.

Idem,  
where under  
appoint-  
ment

## Exceptions

(3) This section does not apply to estates tail or to the personal property, except chattels real, of a person who, at the time of his death, is domiciled out of Ontario. R.S.O. 1950, c. 103, s. 2.

## Application of enactments as to probate, etc.

3. The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property and as respects the dealing with personal property before probate or administration and as respects the payment of costs of administration and other matters in relation to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it is not lawful for some or one only of several joint personal representatives without the authority of a judge to sell or transfer real property. R.S.O. 1950, c. 103, s. 3, *amended*.

## Real and personal property assimilated in matters of administration

4. Subject to the other provisions of this Act, in the administration of the assets of a deceased person, his real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section alters or affects as respects real or personal property of which the deceased has made a testamentary disposition the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies. R.S.O. 1950, c. 103, s. 4.

Payment of debts out of residuary estate  
R.S.O. 1960, c. 433

5. Subject to section 37 of *The Wills Act*, the real and personal property of a deceased person comprised in a residuary devise or bequest, except so far as a contrary intention appears from his will or any codicil thereto, is applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the cost and expenses of administration. R.S.O. 1950, c. 103, s. 5.

## How far personal representatives to be deemed "heirs"

6. When any part of the real property of a deceased person vests in his personal representative under this Act, such personal representative, in the interpretation of any Act of the Legislature or in the construction of any instrument to which the deceased was a party or under which he is interested, shall, while the estate remains in him, be deemed in law his heir, as respects such part, unless a contrary intention appears, but nothing in this section affects the beneficial right to any

property or the construction of words of limitation of any estate in or by any deed, will or other instrument. R.S.O. 1950, c. 103, s. 6.

7. Where an estate or interest of inheritance in real property is vested on a trust or by way of mortgage in a person solely, it, on his death, notwithstanding any testamentary disposition, devolves to and becomes vested in his executor or administrator in like manner as if it were personal estate vesting in him, and accordingly all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with it belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if it were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers. R.S.O. 1950, c. 103, s. 7.

Trust estates  
and interests  
of mort-  
gages

8.—(1) Nothing in this Act takes away a widow's right to dower, but a widow may by deed or instrument in writing, attested by at least one witness, elect to take her interest under this Act in her husband's undisposed-of real property in lieu of all claim to dower in respect of the real property of which her husband was at any time seised or to which at the time of his death he was beneficially entitled, and, unless she so elects, she is not entitled to share in the undisposed-of real property.

Saving as to  
dower and  
right of  
election

(2) The personal representative of the deceased may, by notice in writing, require the widow to make her election, and, if she fails to execute and deliver a deed or instrument of election to him within six months after the service of the notice, she shall be deemed to have elected to take her dower.

Notice  
to elect

(3) Where the widow is an infant or a mentally incompetent person, the right of election may be exercised on her behalf by the Official Guardian with the approval of a judge or by some person authorized by a judge to exercise it, and the Official Guardian or the person so authorized may, for and in the name of the widow, give all notices and do all acts necessary or incidental to the exercise of such right.

Where  
widow under  
disability

(4) Where the widow is a patient in an institution within the meaning of *The Mental Hospitals Act* and the Public Trustee is committee of her estate, he is entitled to exercise on her behalf the power of election conferred by this section. R.S.O. 1960, c. 236

Widow  
patient in  
mental  
hospital  
R.S.O. 1960,  
c. 236

R.S.O. 1950, c. 103, s. 8.

Who to be  
defendants  
in action for  
foreclosure  
where no  
personal  
representa-  
tive of  
mortgagor

**9.**—(1) Where there is no legal personal representative of a deceased mortgagor of freehold property, it is sufficient for the purposes of an action for the foreclosure of the equity of redemption in, or for the sale of such property that the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under the provisions of this Act, to such property or the proceeds thereof be made defendant to such action, and it is not necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it is otherwise ordered by the court in which the action is brought, but, if during the pendency of such action, the equity of redemption devolves upon and becomes vested in a legal personal representative of the mortgagor, he shall be made a party to the action. R.S.O. 1950, c. 103, s. 9 (1), *amended*.

Interpre-  
tation

(2) In subsection 1, "mortgagor" includes the assignee of a mortgagor and any person entitled to or interested in the equity of redemption. R.S.O. 1950, c. 103, s. 9 (2).

Application  
for order  
allowing sale  
free of  
curtesy or  
dower

**10.**—(1) Where the personal representative desires to sell any real property devolving upon him free from curtesy or dower, he may apply to a judge, who may, in a summary way, and upon notice to be served personally unless the judge otherwise directs, order that it be sold free from the right of the tenant by the curtesy or dowress, and in making such order regard shall be had to the interests of all parties.

Effect

(2) If a sale free from such curtesy or dower is ordered, all the right and interest of the tenant by the curtesy or dowress pass thereby, and no conveyance or release thereof to the purchaser shall be required, and the purchaser, his heirs and assigns, hold the real property freed and discharged from the estate or interest of the tenant by the curtesy or dowress.

Payment in  
satisfaction  
of dower or  
curtesy

(3) The judge may direct the payment of such sum in gross out of the purchase money to the person entitled to curtesy or dower as he deems, upon the principles applicable to life annuities, a reasonable satisfaction for such estate or interest, or he may direct the payment to the person entitled of an annual sum, or of the income or interest to be derived from the purchase money or any part thereof, as he deems just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as he deems necessary. R.S.O. 1950, c. 103, s. 10.

Widow's  
preferential  
share where  
estate does  
not exceed  
\$5,000

**11.**—(1) The real and personal property of every man dying intestate and leaving a widow, whether or not he leaves issue, where the net value of such real and personal property

does not exceed \$5,000, belongs to his widow absolutely and exclusively.

(2) Where the net value exceeds \$5,000, the widow is entitled to \$5,000 part thereof, absolutely and exclusively, and has a charge thereon for such sum with interest thereon from the date of the death of the intestate at 4 per cent per annum until payment.

Where estate exceeds \$5,000

(3) The provision for the widow made by this section is in addition and without prejudice to her interest and share in the residue of the real and personal property of the intestate remaining after payment of such sum of \$5,000 and interest in the same way as if such residue had been the whole of the intestate's real and personal property and this section had not been enacted.

Widow's share in remainder of estate

(4) Where the estate consists in whole or in part of real property, this section applies only if the widow elects under section 8 to take an interest in her husband's undisposed-of real property in lieu of dower.

Where estate consists of real property

(5) In this section, "net value" means the value of the real and personal property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. R.S.O. 1950, c. 103, s. 11.

Interpretation

**12.—**(1) The real and personal property of every woman dying intestate and leaving a widower whether or not she leaves issue shall, where the net value of such real and personal property does not exceed \$5,000, belong to her widower absolutely and exclusively.

Widower's preferential share where estate does not exceed \$5,000

(2) Where the net value exceeds \$5,000, the widower is entitled to \$5,000 part thereof, absolutely and exclusively, and has a charge thereon for such sum with interest thereon from the date of the death of the intestate at 4 per cent per annum until payment.

Where estate exceeds \$5,000

(3) The provision for the widower made by this section is in addition and without prejudice to his interest and share in the residue of the real and personal property of the intestate remaining after payment of such sum of \$5,000 and interest in the same way as if such residue had been the whole of the intestate's real and personal property and this section had not been enacted.

Widower's share in remainder of estate

**Application** (4) This section applies only where the husband has not elected under section 29 to take such interest in the real and personal property of his wife as he would have taken if this Act had not been passed.

**Interpretation** (5) In this section, "net value" means the value of the real and personal property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. 1960, c. 26, s. 1.

**Vesting of real estate not disposed of within 3 years** **13.**—(1) Real property not disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto under section 21 by the personal representative within three years after the death of the deceased shall, subject to *The Land Titles Act* in the case of land registered under that Act and subject to subsections 6 and 7 of section 58 of *The Registry Act*, and subject as hereinafter provided, at the expiration of that period, whether probate or letters of administration have or have not been taken, is thenceforth vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative, unless such personal representative, if any, has registered, in the property registry or land titles office, a caution (Form 1) under his hand, and, if such caution is so registered, such real property or the part thereof mentioned therein does not so vest for three years from the time of registration of such caution or of the last caution if more than one are registered.

**Verification** (2) The execution of every caution shall be verified by the affidavit of a subscribing witness in the manner prescribed by *The Registry Act* or *The Land Titles Act*, as the case may be.

**Effect** (3) Where the caution specifies certain parcels of land, it is effectual as to those parcels only.

**Withdrawal of caution** (4) The personal representative, before the expiration of the three years, may register a certificate (Form 2) withdrawing the caution or withdrawing it as to any parcel of land specified in the certificate, and upon registration of the certificate, the property or the parcel specified shall be treated as if the caution had expired.

**Verification** (5) The certificate of withdrawal shall be verified by an affidavit of a subscribing witness (Form 3).

**Renewal of caution** (6) Before a caution expires it may be re-registered, and so on from time to time as long as the personal representative

deems it necessary, and every caution continues in force for three years from the time of its registration or re-registration. R.S.O. 1950, c. 103, s. 12 (1-6).

**14.** Nothing in section 13 derogates from any right possessed by an executor or administrator with the will annexed under a will or under *The Trustee Act* or from any right possessed by a trustee under a will. R.S.O. 1950, c. 103, s. 13. Ordinary rights of executors, etc., preserved R.S.O. 1960, c. 408

**15.—(1)** Where a personal representative has not registered a caution within the proper time after the death of the deceased or has not re-registered a caution within the proper time, he may register or re-register the caution, as the case may be, provided he registers therewith, Registration of caution after three years from death of testator

- (a) the affidavit of execution; and
- (b) a further affidavit stating that he finds or believes that it is or may be necessary for him to sell the real property of the deceased, or the part thereof mentioned in the caution, under his powers and in fulfilment of his duties, and, as far as they are known to him, the names of all persons beneficially interested in the real property, and whether any, and, if so, which of them, are infants or mentally incompetent persons; and
- (c) the consent in writing of every adult and of the Official Guardian on behalf of every infant and mentally incompetent person whose property or interest would be affected, and an affidavit verifying such consent; or
- (d) in the absence and in lieu of such consent, an order of a judge of the Supreme Court or of the county or district court of the county or district in which the property or a part of it is situate, or the certificate of the Official Guardian authorizing the caution to be registered or re-registered, which order or certificate the judge or Official Guardian may make with or without notice on such evidence as satisfies him of the propriety of permitting the caution to be registered or re-registered, and the order or certificate to be registered does not require verification and shall not be rendered null by any defect of form or otherwise.



Application  
of section

(2) This section extends to cases where a grant of probate of the will or of administration to the estate of the deceased may not have been made within the period after the death of the testator or intestate within which a caution is required to be registered.

Effect of  
such registra-  
tion

(3) Where a caution is registered or re-registered under this section, it has the same effect as a caution registered within the proper time after the death of the deceased and of vesting or re-vesting, as the case may be, the real property of the deceased in his personal representative, save as to persons who in the meantime have acquired rights for valuable consideration from or through a person beneficially entitled, and save also and subject to any equities of any non-consenting person beneficially entitled, or of a person claiming under him, for improvements made after the time within which the personal representative might, without any consent, order or certificate, have registered or re-registered a caution, if his real property is afterwards sold by the personal representative.

Signature  
to caution

(4) Where there are two or more personal representatives, it is sufficient if a caution or the affidavit mentioned in clause *b* of subsection 1 is signed or made by one of such personal representatives. R.S.O. 1950, c. 103, s. 14.

Effect of  
repealing  
enactment

**16.** Where a caution has been registered or re-registered under any enactment repealed and not re-enacted by this Act and is still in force, such caution has the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 13. R.S.O. 1950, c. 103, s. 15.

Vacating  
caution

**17.** Any person beneficially entitled to any real property affected by the registration or re-registration of a caution may apply to a judge to vacate the registration or re-registration, and the judge, if satisfied that the vesting of any such real property in such person or of any property of the deceased in any other of the persons beneficially entitled ought not to be delayed, may order that the registration or re-registration be vacated as to such property, and every caution, the registration or re-registration of which is so vacated, thereafter ceases to operate. R.S.O. 1950, c. 103, s. 16.

Land  
in two or  
more  
persons

**18.** Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the will of the deceased. R.S.O. 1950, c. 103, s. 17.

**19.**—(1) Where an infant is interested in real property that but for this Act would not devolve on the personal representative, no sale or conveyance is valid under this Act without the written approval of the Official Guardian, or, in the absence of such consent or approval, without an order of a judge. Sales where infants interested

(2) A judge may appoint the local judge of a county or district or the local master therein as local guardian of infants in such county or district during the pleasure of the judge, with authority to give such written approval instead of the Official Guardian, and the Official Guardian and local guardian are subject to such rules as the court may make in regard to their authority and duties under this Act. R.S.O. 1950, c. 103, s. 18. Local guardians

**20.** Except as otherwise provided in this Act, the personal representative of a deceased person has power to dispose of and otherwise deal with the real property vested in him by virtue of this Act, with the like incidents, but subject to the like rights, equities and obligations, as if the real property were personal property vested in him. R.S.O. 1950, c. 103, s. 19. Power of personal representative over real property

**21.**—(1) The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case is it necessary that the persons beneficially entitled concur in any such sale except where it is made for the purpose of distribution only. R.S.O. 1950, c. 103, s. 20 (1). Powers of executors and administrators as to selling and conveying real estate

(2) Except with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein, including the Official Guardian acting on behalf of an infant or mentally incompetent person, no sale of any such real property made for the purpose of distribution only is valid as respects any person beneficially entitled thereto unless he concurs therein, but, where a mentally incompetent person is beneficially entitled or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of the Official Guardian it would be inconvenient to require the concurrence of such persons, the Official Guardian may, upon proof satisfactory to him that the sale is in the interest and to the advantage of the estate of the deceased person and the persons beneficially interested therein, approve the sale on Concurrence of heirs and devisees

behalf of such mentally incompetent person and non-concurring persons, and any such sale made with the written approval of the Official Guardian is valid and binding upon such mentally incompetent person and non-concurring persons, and for this purpose the Official Guardian has the same powers and duties as he has in the case of infants, but in any case a judge may dispense with the concurrence of the persons beneficially entitled or any or either of them. R.S.O. 1950, c. 103, s. 20 (2), *amended*.

Powers of personal representative as to dividing estate among persons entitled

(3) The personal representative has power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Official Guardian on behalf of infants or mentally incompetent persons, if any, so entitled, to convey, divide or distribute the estate of the deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein.

Concurrence where person is a patient in a mental hospital  
R.S.O. 1960, c. 236

(4) Where a person beneficially entitled is a patient in an institution within the meaning of *The Mental Hospitals Act* and the Public Trustee is committee of his estate, the concurrence and approval required by subsections 2 and 3 may be given by the Public Trustee on behalf of such patient. R.S.O. 1950, c. 103, s. 20 (3, 4).

Distribution by order within three years from death

(5) Upon the application of the personal representative or of any person beneficially entitled, the court may, before the expiration of three years from the death of the deceased, direct the personal representative to divide or distribute the estate or any part thereof to or among the persons beneficially entitled according to their respective rights and interests therein. R.S.O. 1950, c. 103, s. 20 (5), *amended*.

Exercise of power of division without concurrence

(6) The power of division conferred by subsection 3 may also be exercised, although all the persons beneficially interested do not concur, with the written approval of the Official Guardian, which may be given under the same conditions and with the like effect as in the case of a sale under subsection 2. R.S.O. 1950, c. 103, s. 20 (6).

Sections 20 and 21 not to apply to administrators of personal estate only

(7) Section 20 and this section do not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and do not derogate from any right possessed by a personal representative independent of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will except with the approval of a judge.

(8) The powers of a personal representative under sub-section 2, 3 or 6 have heretofore been and shall hereafter be exercisable during the period of three years from the death of the deceased without an order of a judge, provided that,

Conveyance by personal representative without an order

- (a) real property conveyed, divided or distributed by virtue of such powers to or among the persons beneficially entitled thereto, shall be deemed to have been and to be liable for the payment of the debts of the deceased owner as if no conveyance, division or distribution had been made, even though it has subsequently during such three-year period been conveyed to a purchaser or purchasers in good faith and for value, but, in the case of such purchaser or purchasers, such liability shall only continue after the expiry of such three-year period if some action or legal proceeding has been instituted by the creditor, his assignee or successor to enforce the claim and a *lis pendens* or a caution has, before such expiry, been registered against the property; and that
- (b) although such liability has applied and shall apply as aforesaid in respect of real property so conveyed, divided or distributed, any such purchaser, in good faith and for value, shall be deemed to have had and to have a right to relief over against the persons beneficially entitled, and where such conveyance, division or distribution was made by the personal representative with knowledge of the debt in respect of which claim is made, or without due advertisement for creditors, then against such personal representative; and that
- (c) upon the expiration of such three-year period where no *lis pendens* or caution has been registered, sub-section 2 of section 24 and section 26 apply as if such real property had become vested in the person beneficially entitled thereto under section 13. R.S.O. 1950, c. 103, s. 20 (7, 8), *amended*.

**22.** The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative that has been made without the written approval of the Official Guardian, where such approval is required, is a confirmation of the sale as to him. R.S.O. 1950, c. 103, s. 21.

Effect of accepting share of purchase money

**23.** A person purchasing in good faith and for value real property from a personal representative in a manner authorized by this Act is entitled to hold it freed and discharged from any debts or liabilities of the deceased owner, except such as

Protection of bona fide purchasers from personal representatives

are specifically charged thereon otherwise than by his will, and from all claims of the persons beneficially entitled thereto, and is not bound to see to the application of the purchase money. R.S.O. 1950, c. 103, s. 22.

Protection of  
*bona fide*  
purchasers  
from  
beneficiary

**24.**—(1) A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of a judge, is entitled to hold it freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, but nothing in this section affects the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative. R.S.O. 1950, c. 103, s. 23 (1), *amended*.

Extent to  
which real  
property  
remains  
liable to  
debts and  
personal  
liability of  
beneficiary

(2) Real property that becomes vested in a person beneficially entitled thereto under section 13 continues to be liable to answer the debts of the deceased owner so long as it remains vested in such person, or in any person claiming under him, not being a purchaser in good faith and for valuable consideration, as it would have been if it had remained vested in the personal representative, and in the event of a sale thereof in good faith and for value by such person beneficially entitled he is personally liable for such debts to the extent of the proceeds of such real property. R.S.O. 1950, c. 103, s. 23 (2).

Powers of  
personal re-  
presentative  
as to leasing  
and mort-  
gaging

**25.**—(1) The powers of a personal representative under this Act include,

- (a) power to lease from year to year while the real property remains vested in him;
- (b) power, with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein including the Official Guardian acting on behalf of an infant or mentally incompetent person, to lease for a longer term;
- (c) power to mortgage for the payment of debts.

Approval of  
Official  
Guardian

(2) The written approval of the Official Guardian to mortgaging is required where it would be required if the real property were being sold. R.S.O. 1950, c. 103, s. 24.

**26.**—(1) A purchaser in good faith and for value of real property of a deceased owner that has become vested under section 13 in a person beneficially entitled thereto is entitled to hold it freed and discharged from the claims of creditors of the deceased owner except such of them of which he had notice at the time of his purchase.

Rights of purchaser in good faith against claims of creditors

(2) Nothing in subsection 1 affects the right of the creditor against the personal representative personally where he has permitted the real property to become vested in the person beneficially entitled to the prejudice of the creditor or against the person beneficially entitled. R.S.O. 1950, c. 103, s. 25

Liability of personal representative

**27.** Subject to subsection 1 of section 6 of *The Legitimation Act*, an illegitimate child or relative shall not share under any of the provisions of this Act. R.S.O. 1950, c. 103, s. 26; 1953, c. 29, s. 1.

Effect of illegitimacy R.S.O. 1960, c. 210

**28.**—(1) If a child of an intestate has been advanced by the intestate by settlement or portion of real or personal property or both, and the same has been so expressed by the intestate in writing or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal property of the intestate to be distributed under this Act, and if the advancement is equal to or greater than the amount of the share that the child would be entitled to receive of the real and personal property of the intestate, as so reckoned, then the child and his descendants shall be excluded from any share in the real and personal property of the intestate.

Cases of children advanced by settlement, etc.

(2) If the advancement is less than the share, the child and his descendants are entitled to so much only of the real and personal property as is sufficient to make all the shares of the children in the real and personal property and advancement to be equal, as nearly as can be estimated.

If advancement is not equal

(3) The value of any real or personal property so advanced shall be deemed to be that, if any, which has been acknowledged by the child by an instrument in writing, otherwise the value shall be estimated according to the value of the property when given.

Value of property advanced, how estimated

(4) The maintaining or educating, of, or the giving of money to, a child without a view to a portion or settlement in life shall not be deemed an advancement within the meaning of this Act. R.S.O. 1950, c. 103, s. 27.

Education, etc., not advancement

Distribution  
of property  
of married  
woman  
dying  
intestate

**29.**—(1) Subject to section 12, the real and personal property, whether separate or otherwise, of a married woman in respect of which she dies intestate shall be distributed as follows: one-third to her husband if she leaves issue, and one-half if she leaves no issue, and, subject thereto, devolves as if her husband had predeceased her. R.S.O. 1950, c. 103, s. 28 (1); 1960, c. 26, s. 2.

Saving as to  
husband's  
interest in  
property of  
wife

(2) A husband who, if this Act had not been passed, would be entitled to an interest as tenant by the curtesy in real property of his wife, may, by deed or instrument in writing executed and attested by at least one witness and delivered to the personal representative, if any, or, if there is none, deposited in the office of the Registrar of the Supreme Court at Osgoode Hall within six months after his wife's death, elect to take such interest in the real and personal property of his wife as he would have taken if this Act had not been passed, in which case the husband's interest therein shall be ascertained in all respects as if this Act had not been passed, and he is entitled to no further interest thereunder. R.S.O. 1950, c. 103, s. 28 (2).

Distribution  
of personal  
estate  
R.S.O. 1960,  
c. 210

**30.** Subject to subsection 2 of section 6 of *The Legitimation Act* and except as otherwise provided in this Act, the personal property of a person dying intestate shall be distributed as follows: one-third to the wife of the intestate and all the residue by equal portions among the children of the intestate and such persons as legally represent the children in case any of them died in his lifetime, and, if there are no children or any legal representatives of them, then two-thirds of the personal property shall be allotted to the wife and the residue thereof shall be distributed equally to every of the next of kindred of the intestate who are of equal degree and those who legally represent them, and for the purpose of this section the father and the mother and the brothers and the sisters of the intestate shall be deemed of equal degree; but there shall be no representations admitted among collaterals after brothers' and sisters' children, and, if there is no wife, then all such personal property shall be distributed equally among the children, and, if there is no child, then to the next of kindred in equal degree of or unto the intestate and their legal representatives and in no other manner; but, if there is only one child or there are legal representatives of only one child, the personal property of a person dying intestate shall be distributed as follows: one-half to the wife of the intestate and the other half to the child or the legal representatives of the child. R.S.O. 1950, c. 103, s. 29; 1953, c. 29, s. 2.

**31.** If after the death of a father any of his children die intestate without wife or children in the lifetime of the mother, every brother and sister and the representatives of them shall have an equal share with her, anything in section 30 to the contrary notwithstanding. R.S.O. 1950, c. 103, s. 30.

Children  
share with  
mother

**32.** Subject to section 52 of *The Trustee Act*, no such distribution shall be made until after one year from the death of the intestate, and every person to whom in distribution a share is allotted shall, if any debt owing by the intestate is afterwards sued for and recovered or otherwise duly made to appear, refund and pay back to the personal representative his rateable part of that debt and of the costs of suit and charges of the personal representative by reason of such debt out of the part or share so allotted to him, thereby to enable the personal representative to pay and satisfy such debt, and shall give bond with sufficient sureties that he will do so. R.S.O. 1950, c. 103, s. 31.

Distribution  
not to be  
made for  
one year  
R.S.O. 1960,  
c. 408

**33.** Rules regulating the practice and procedure to be followed in all proceedings under this Act and a tariff of fees to be allowed and paid to solicitors for services rendered in such proceedings may be made by the Rules Committee, subject to the approval of the Lieutenant Governor in Council. R.S.O. 1950, c. 103, s. 32.

Rules of  
procedure

**34.** The Lieutenant Governor in Council may appoint a deputy *pro tempore* of the Official Guardian for the purposes of this Act who shall have all the powers of the Official Guardian for such purposes. R.S.O. 1950, c. 103, s. 33.

Appointment  
of deputy  
Official  
Guardian  
*pro tem*

**35.** Affidavits may be used in proceedings taken under this Act. R.S.O. 1950, c. 103, s. 34.

Affidavits



FORM 1

*The Devolution of Estates Act*

(Section 13 (1) )

CAUTION

I,....., executor of (or administrator with the will annexed of, or administrator of)....., who died on or about the.....day of....., 19....., certify that it may be necessary for me under my powers and in fulfilment of my duty as executor (or administrator) to sell the real property of the said.....or part thereof (or the caution may specify any particular part or parcel) and of this all persons concerned are hereby required to take notice.

R.S.O. 1950, c. 103, Form 1.

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FORM 2

*The Devolution of Estates Act*

(Section 13 (4) )

CERTIFICATE OF WITHDRAWAL

I,....., executor (or administrator) of .....hereby withdraw the caution heretofore registered with respect to the real property of.....(or as the case may be).

R.S.O. 1950, c. 103, Form 2.

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FORM 3

*The Devolution of Estates Act*

(Section 13 (5) )

AFFIDAVIT OF WITNESS

I,....., of, etc., make oath and say: that I am well acquainted with.....named in the above certificate; that I was present and did see the said certificate signed by the said.....; that I am a subscribing witness to the said certificate, and that I believe the said.....is the person who registered the caution referred to in the said certificate.

Sworn, etc.

R.S.O. 1950, c. 103, Form 3.

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