

1937

c 163 Devolution of Estates Act

Ontario

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2. *INTESTATE SUCCESSION.*

CHAPTER 163.

The Devolution of Estates Act.

INTERPRETATION.

Interpreta-
tion."Mentally
incompetent
person.""Mental
incompe-
tency.""Personal
representa-
tive."Devolution
to personal
representa-
tive of
deceased.Imp. Act
60 and 61 V.
c. 65, s. 1.Idem
where under
appointment.

1. In this Act,—

(a) "Mentally incompetent person" shall mean 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 a disorder of the mind,

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

(b) "Mental incompetency" shall mean the condition of mind of a mentally incompetent person;

(c) "Personal representative" shall mean and include an executor, an administrator, and an administrator with the will annexed. R.S.O. 1927, c. 148, s. 1; 1937, c. 18, s. 2.

2.—(1) All real and personal property which is vested in any person without a right in any other person to take by survivorship shall, on his death, whether testate or intestate, and notwithstanding any testamentary disposition, devolve to and become 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, the same shall be administered, dealt with and distributed as if it were personal property not so disposed of.

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

(3) This section shall not apply to estates tail or to the personal property, except chattels real, of any person who, at the time of his death, is domiciled out of Ontario. R.S.O. 1927, c. 148, s. 2.

Exceptions.

Administration of Real Property.

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 dealings 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 shall 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 shall not be lawful for some or one only of several joint personal representatives without the authority of the Supreme Court or a judge thereof to sell or transfer real property. R.S.O. 1927, c. 148, s. 3.

Application of enactments as to probate, etc.

Imp. Act 60 and 61 V. c. 65, s. 2 (2).

Exception.

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 shall alter or affect 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. 1927, c. 148, s. 4.

Real and personal property assimilated in matters of administration.

Imp. Act 60 and 61 V. c. 65, s. 2 (3).

Payment of Debts out of Residue.

5. Subject to the provisions of section 37 of *The Wills Act* the real and personal property of a deceased person comprised in any residuary devise or bequest shall, except so far as a contrary intention appears from his will or any codicil thereto, be 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. 1927, c. 148, s. 5.

Payment of debts out of residuary estate.

Rev. Stat. c. 164.

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 this Legislature, or in the construction of any instru-

How far personal representatives to be deemed "heirs."

ment 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 shall affect 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. 1927, c. 148, s. 6.

Mortgages, Trust Estates and Dower.

Trust estates and interests of mortgages.

Imp. Act 44 and 45 V. c. 41, s. 30.

7. Where an estate or interest of inheritance in real property is vested on any trust or by way of mortgage in any person solely the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or administrator in like manner as if the same 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 the same shall 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 the same 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. 1927, c. 148, s. 7.

Saving as to dower and right of election.

8.—(1) Nothing in this Act shall take 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 shall not be entitled to share in the undisposed of real property.

Idem.

(2) The personal representative of the deceased may, by notice in writing, require his 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. R.S.O. 1927, c. 148, s. 8 (1, 2).

Where widow under disability.

(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 of the Supreme Court or by some person authorized by a judge of the Supreme Court 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. R.S.O. 1927, c. 148, s. 8 (3); 1937, c. 18, s. 3.

(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 shall be entitled to exercise on her behalf the power of election conferred by this section. 1930, c. 21, s. 11 (1).

Where widow patient in mental hospital.

Rev. Stat. c. 392.

9.—(1) Where there is no legal personal representative of a deceased mortgagor of freehold property it shall be 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 shall not be necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it shall be otherwise ordered by the court in which the action is brought or by a judge thereof, 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.

Who to be defendants in action for foreclosure where no personal representative of mortgagor.

(2) In subsection 1 the word "mortgagor" shall include the assignee of a mortgagor and any person entitled to or interested in the equity of redemption. R.S.O. 1927, c. 148, s. 9.

"Mortgagor" meaning of.

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 of the Supreme Court, who may, in a summary way, and upon notice, to be served personally unless the judge otherwise directs, order that the same shall 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.

Application for order allowing sale free of dower or curtesy.

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

Effect.

(3) The judge may direct the payment of such sum in gross out of the purchase money to the person entitled to

Payment in satisfaction of dower or curtesy.

curtesy or dower as he may deem, upon the principles applicable to life annuities, a reasonable satisfaction for such estate or interest, or 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 may deem 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 may deem necessary. R.S.O. 1927, c. 148, s. 10.

Widow's preferential share where estate does not exceed \$1,000.

11.—(1) The real and personal property of every man dying intestate and leaving a widow but no issue shall, where the net value of such real and personal property does not exceed \$1,000, belong to his widow absolutely and exclusively.

Where estate exceeds \$1,000.

(2) Where the net value exceeds \$1,000 the widow shall be entitled to \$1,000 part thereof, absolutely and exclusively, and shall have charge thereon for such sum with interest thereon from the date of the death of the intestate at four per centum per annum until payment.

Widow's share in remainder of estate.

(3) The provision for the widow made by this section shall be 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 \$1,000 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.

Where estate consists of real property.

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

"Net value" meaning of.

(5) In this section "net value" shall mean 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. 1927, c. 148, s. 11.

VESTING OF ESTATE AND CAUTIONS.

Vesting of real estate not disposed of within three years.

12.—(1) Real property not disposed of, conveyed to, divided or distributed among the person's beneficially entitled thereto, under the provisions of section 20, 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 56 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

Rev. Stat. cc. 174, 170.

taken, be thenceforward 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 proper registry or land titles office, a caution (Form 1) under his hand, and if such caution is so registered such real property of the part thereof mentioned therein shall not be so vested for three years from the time of registration of such caution or of the last caution if more than one are registered. Unless caution registered. R.S.O. 1927, c. 148, s. 12 (1); 1931, c. 32, s. 2 (1); 1933, c. 59, s. 16 (1).

(2) The execution of every caution shall be verified by Verification. the affidavit of a subscribing witness in the manner prescribed by *The Registry Act*, or *The Land Titles Act*, as the Rev. Stat. cc. 170, 174. case may be.

(3) Where the caution specified certain parcels of land it Effect. shall be effectual as to those parcels only. R.S.O. 1927, c. 148, s. 12 (2, 3).

(4) The personal representative, before the expiration of Withdrawal of caution. the three years, may register a certificate (Form 2), withdrawing the caution, or withdrawing the same as to any parcel of land specified in such certificate and, upon registration of the certificate, the property or the parcel specified shall be treated as if the caution had expired. R.S.O. 1927, c. 148, s. 12 (4); 1933, c. 59, s. 16 (2).

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

(6) Before a caution expires it may be re-registered, and Renewal of caution. so on from time to time as long as the personal representative deems it necessary, and every caution shall continue in force for three years from the time of its registration or re-registration. R.S.O. 1927, c. 148, s. 12 (5, 6); 1933, c. 59, s. 16 (3).

(7) Notwithstanding anything contained in subsection 1 Real property not to vest until statement under Rev. Stat. c. 26 filed. hereof, real property, devolving by reason of any will which has not been proved or registered or by reason of any intestacy in respect of which letters of administration have not been granted, shall not vest at the expiration of three years after the death of the deceased in the persons beneficially entitled thereto under such will or intestacy or their assigns as in that subsection provided unless and until a statement similar to that required by section 19 of *The Succession Duty Act* has been filed either with the Treasurer of Ontario or with the registrar of the surrogate court of the county or district where the deceased had his fixed place of abode or where such real property or part thereof is situate. R.S.O. 1927, c. 148, s. 12 (7); 1931, c. 32, s. 2 (2).

Ordinary rights of executors, etc., preserved.

Rev. Stat. c. 165.

13. Nothing in section 12 shall derogate 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. 1927, c. 148, s. 13.

Registration of caution after three years from death of testator.

14.—(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,—

- (a) the affidavit of execution;
- (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;
- (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 wherein the property or some part thereof 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 shall not require verification and shall not be rendered null by any defect of form or otherwise. R.S.O. 1927, c. 148, s. 14 (1); 1937, c. 18, s. 3.

Application of this section.

(2) This section shall extend 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.

(3) Where a caution is registered or re-registered, under the authority of this section, it shall have 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 any person beneficially entitled, and save also and subject to any equities of any non-consenting person beneficially entitled, or 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.

Effect of such registration.

(4) Where there are two or more personal representatives it shall be sufficient if any caution or the affidavit mentioned in clause *b* of subsection 1 is signed or made by one of such personal representatives. R.S.O. 1927, c. 148, s. 14 (2-4).

Signature to caution.

15. Where a caution has been registered or re-registered under the authority of any enactment repealed and not re-enacted by this Act and is still in force, such caution shall have the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 12. R.S.O. 1927, c. 148, s. 15.

Effect of repealing enactment.

16. Any person beneficially entitled to any real property affected by the registration or re-registration of a caution may apply to a judge of the Supreme Court to vacate such 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 such registration or re-registration be vacated as to such property, and every caution, the registration or re-registration of which is so vacated, shall thereafter cease to operate. R.S.O. 1927, c. 148, s. 16.

Vacating caution.

17. Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they shall take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the provisions of the will of the deceased. R.S.O. 1927, c. 148, s. 17.

Land vesting in two or more persons.

POWERS OF PERSONAL REPRESENTATIVE.

18.—(1) Where an infant is interested in real property which but for this Act would not devolve on the personal

Sales where infants interested.

representative, no sale or conveyance shall be valid under this Act without the written approval of the Official Guardian appointed under *The Judicature Act*, or, in the absence of such consent or approval, without an order of a judge of the Supreme Court.

Rev. Stat.
c. 100.

Local guar-
dians.

(2) The Supreme Court may appoint the local judge of any county or district or the local master therein, as local guardian of infants, in such county or district during the pleasure of the Court, with authority to give such written approval instead of the Official Guardian, and the Official Guardian and local guardian shall be subject to such rules as the Supreme Court may make in regard to their authority and duties under this Act. R.S.O. 1927, c. 148, s. 18.

Power of
personal
representa-
tive over real
property.

19. Except as herein otherwise provided the personal representative of a deceased person shall have 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 same were personal property vested in him. R.S.O. 1927, c. 148, s. 19.

Powers of
executors
and adminis-
trators as to
selling and
conveying
real estate.

20.—(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 shall it be necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only. R.S.O. 1927, c. 148, s. 20 (1).

Concur-
rence of
heirs and
devisees.

(2) Except with the approval of the majority of the persons beneficially entitled thereto, 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 shall be 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, he may, upon proof satisfactory to him that such sale is in the interest and to the advantage of the estate of such deceased person and the persons beneficially interested therein, approve such sale on behalf of such mentally incompetent person and non-concurring persons, and any such sale made with the written approval of the Official Guardian shall be valid and binding upon such

Proviso as to
mentally in-
competent
persons and
non-concur-
ring heirs
and devisees.

mentally incompetent person and non-concurring persons, and for this purpose the Official Guardian shall have the same powers and duties as he has in the case of infants, and provided also that in any case the Supreme Court or a judge thereof may dispense with the concurrence of the persons beneficially entitled or any or either of them. R.S.O. 1927, c. 148, s. 20 (2); 1931, c. 32, s. 3; 1937, c. 18, s. 3.

(3) The personal representative shall also have 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. R.S.O. 1927, c. 148, s. 20 (3); 1937, c. 18, s. 3.

Powers of executors and administrators as to dividing estate among persons entitled.

(4) Where the 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. 1930, c. 21, s. 11 (2).

Concurrence where person is a patient in a mental hospital.

Rev. Stat. c. 392.

(5) Upon the application of the personal representative or of any person beneficially entitled the Supreme Court or a judge thereof 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.

Distribution by order of Court within three years from death.

(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. 1927, c. 148, s. 20 (4, 5).

Exercise of power of division without concurrence.

(7) Section 19 and this section shall not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and shall not derogate from any right possessed by a personal representative independently of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will unless with the approval of the Supreme Court or a judge thereof. R.S.O. 1927, c. 148, s. 20 (7).

Sections 19 and 20 not to apply to administrators of personal estate only.

Provisions as to executor who has not obtained probate.

(8) The powers of a personal representative under subsection 2, 3 or 6 have heretofore been and shall hereafter be exercisable during the period of three years from the death

Conveyance by personal representative without an order.

of the deceased without an order of the Supreme Court or a judge thereof, provided, however, that,—

Real prop-
erty con-
veyed, etc.,
by personal
representa-
tion to
remain
liable for
debts.

(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

Limitation
as to
purchaser
in good
faith.

Relief over.

(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

Where no
lis pendens
or caution.

(c) upon the expiration of such three-year period where no *lis pendens* or caution has been registered, the provisions of subsection 2 of section 23 and of section 25 shall apply as if such real property had become vested in the person beneficially entitled thereto under section 12. R.S.O. 1927, c. 148, s. 20 (8); 1930, c. 21, s. 11 (4).

Effect of
accepting
share of pur-
chase money

21. The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative which has been made without the written approval of the Official Guardian, where such approval is required, shall be a confirmation of the sale as to him. R.S.O. 1927, c. 148, s. 21.

Protection of
bona fide
purchasers
from person-
al represen-
tatives.

22. A person purchasing in good faith and for value real property from the personal representative in manner authorized by this Act shall be entitled to hold the same freed and discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise

than by his will, and from all claims of the persons beneficially entitled thereto, and shall not be bound to see to the application of the purchase money. R.S.O. 1927, c. 148, s. 22.

23.—(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 the Supreme Court or a judge thereof, shall be entitled to hold the same 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 shall affect 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.

Protection of bona fide purchasers from beneficiary.

(2) Real property which becomes vested in the person beneficially entitled thereto, under section 12, shall continue 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 shall be personally liable for such debts to the extent of the proceeds of such real property. R.S.O. 1927, c. 148, s. 23.

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

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

Powers of personal representative as to leasing and mortgaging.

(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. R.S.O. 1927, c. 148, s. 24 (1); 1931, c. 32, s. 4; 1933, c. 59, s. 16 (4); 1937, c. 18, s. 3.

Approval of Official Guardian.

(2) The written approval of the Official Guardian to mortgaging shall be required where it would be required if the real property were being sold. R.S.O. 1927, c. 148, s. 24 (2).

25.—(1) A purchaser in good faith and for value of real property of a deceased owner which has become vested under the provisions of section 12 in a person beneficially entitled

Rights of purchaser in good faith against claims of creditors.

thereto, shall be 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.

Liability of personal representative.

(2) Nothing in subsection 1 shall affect 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. 1927, c. 148, s. 25.

DISTRIBUTION OF ESTATE.

Effect of illegitimacy.

26. An illegitimate child or relative shall not share under any of the provisions of this Act. R.S.O. 1927, c. 148, s. 26.

Rev. Stat. c. 216.

NOTE.—*See Legitimation Act.*

Advancement.

Cases of children who have been advanced by settlement, etc.

27.—(1) If any child of an intestate has been advanced by him 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 such intestate to be distributed under the provisions of this Act, and if such advancement is equal to or greater than the amount of the share which such child would be entitled to receive of the real and personal property of the deceased, as so reckoned, then such child and his descendants shall be excluded from any share in the real and personal property of the intestate.

If such advancement be not equal.

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

Value of property advanced, how estimated.

(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 such value shall be estimated according to the value of the property when given.

Education, etc., not advancement.

(4) The maintaining or educating, 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. 1927, c. 148, s. 27.

Intestate Married Women.

28.—(1) 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 shall devolve as if her husband had predeceased her.

Distribution of property of married woman dying intestate.

(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 surrogate clerk at Toronto, 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 shall be entitled to no further interest thereunder. R.S.O. 1927, c. 148, s. 28.

Saving as to husband's interest in property of wife.

Distribution of Personalty.

29. Except as in this Act is otherwise provided the personal property of a person dying intestate shall be distributed as follows, that is to say: 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 such children in case any of them have died in his lifetime, and if there are no children or any legal representatives of them then one-half 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 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; provided that if there is only one child or legal representatives of only one child the personal property of a person dying intestate shall be distributed as follows, that is to say: one-half to the wife of the intestate and the other half to such child or the legal representatives of such child. R.S.O. 1927, c. 148, s. 29; 1929, c. 42, s. 2 (1, 2).

Distribution of personal estate.

Children
share with
mother.

30. 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 29 to the contrary notwithstanding. R.S.O. 1927, c. 148, s. 30.

Distribution
not to be
made for
one year.

Rev. Stat.
c. 165.

31. Subject to the provisions of section 51 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 shall be allotted shall, if any debt owing by the intestate shall be 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. 1927, c. 148, s. 31.

GENERAL PROVISIONS.

Rules of
procedure.

32. 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 under the provisions of *The Judicature Act*. R.S.O. 1927, c. 148, s. 32.

Rev. Stat.
c. 100.

Appointment
of deputy
Official Guar-
dian pro tem.

33. 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. 1927, c. 148, s. 33.

Affidavits.

34. Affidavits may be used in proceedings taken under this Act. R.S.O. 1927, c. 148, s. 34.

FORM 1.

(Section 12.)

THE DEVOLUTION OF ESTATES ACT.

I, _____, executor of (or *administrator, with the will annexed of, or administrator of*) _____, who died on or about the _____ day _____, 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. 1927, c. 148, Form 1.

FORM 2.

(Section 12.)

THE DEVOLUTION OF ESTATES ACT.

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. 1927, c. 148, Form 2.

FORM 3.

(Section 12.)

THE DEVOLUTION OF ESTATES ACT.

I, _____, of, etc., make oath and say 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 I believe the said _____ is the person who regis-
 tered the caution referred to in the said certificate.

Sworn, etc.

R. S. O. 1927, c. 148, Form 3.