

1937

c 214 Dependants' Relief Act

Ontario

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CHAPTER 214.

The Dependants' Relief Act.

1. In this Act,—

Interpreta-
tion.

- (a) "Applicant" shall mean and include a dependant making application for an allowance under this Act, and in the case of a dependant who is a patient in an institution under *The Mental Hospitals Act*, or who has been declared a mentally incompetent person, the Public Trustee or committee of such person as the case may be, and in the case of an infant, the Official Guardian, applying for an allowance under this Act on behalf of such patient in an institution under *The Mental Hospitals Act*, mentally incompetent person or infant, as the case may be; Rev. Stat. c. 392. "Applicant"
- (b) "Dependant" shall mean and include the wife or husband of a testator, the child of a testator under the age of sixteen years and the child of a testator over that age who through illness or infirmity is unable to earn a livelihood; "Dependant."
- (c) "Executor" shall include administrator with the will annexed; "Executor."
- (d) "Letters probate" shall include letters of administration with the will annexed; 1929, c. 47, s. 2. "Letters probate."
- (e) "Testator" shall mean and include a person who by deed or will or by any other instrument or act so disposes of real or personal property, or any interest therein, that the same will pass at his death to some other person; "Testator."
- (f) "Will" shall mean and include any deed, will, codicil, instrument or other act by which a testator so disposes of real or personal property that the same will pass at his death to some other person. 1930, c. 35, s. 2. "Will."

2.—(1) Where it is made to appear to a judge of the surrogate court of the county or district in which a testator was domiciled at the time of death that such testator has by will Order for allowance for maintenance.

so disposed of real or personal property that adequate provision has not been made for the future maintenance of his dependants or any of them, the judge may make an order charging the whole or any portion of the estate in such proportion and in such manner as to him may seem proper, with payment of an allowance sufficient to provide such maintenance.

Form of allowance.

(2) The allowance may be by way of an amount payable annually or otherwise, or of a lump sum to be paid, or of certain property to be conveyed or assigned either absolutely or for life or for a term of years to the dependant by whom or on whose behalf the application is made, or for his use and benefit as the judge may see fit, and in the event of a conveyance of property being ordered the judge may give all necessary and proper directions for the execution of the conveyance or conveyances, either by the executor or by such other person as the judge may direct, or may grant a vesting order. 1929, c. 47, s. 3.

Who may apply.

3. The application for an allowance may be made by a dependant, or in the case of a dependant who is a patient in an institution under *The Mental Hospitals Act*, or has been declared a mentally incompetent person, by the Public Trustee or committee as the case may be, or in the case of a dependant under the age of twenty-one years, by the Official Guardian, or by a guardian appointed by the court. 1929, c. 47, s. 4; 1937, c. 72, s. 19.

Rev. Stat., c. 392.

Procedure.

4.—(1) The application shall be made to the judge in chambers upon originating notice according to the practice of the court. 1929, c. 47, s. 5 (1).

When application to be made.

(2) Where letters probate have been or are applied for by the wife or husband of the testator or a guardian on behalf of minor dependants, an application under this section for an allowance for such wife or husband, or for such minor dependants shall be made at the time of applying for letters probate and in every other case the application shall be made within three months after the death of the testator, but the judge, if he deems it just, may allow an application to be made at any time as to any portion of the estate remaining undistributed at the date of the application. 1935, c. 17, s. 2.

Distribution of estate postponed.

(3) After service of notice of the application the executors or trustees under the will shall not proceed with the distribution of the estate except so far as may be necessary for the payment of debts and funeral and testamentary expenses and succession duty until the application is disposed of.

(4) At any time before the hearing of the application a judge of the Supreme Court upon motion on behalf of the trustees or executors, or the applicant, or any other person interested, and upon being satisfied that the total value of the estate of the testator exceeds \$10,000, may by order direct that the application shall be heard by a judge of the Supreme Court and thereupon the matter shall be transferred into the Supreme Court and the application shall be heard by a judge of the Supreme Court and he shall have the like powers and shall proceed in the like manner as in the case of a hearing and determination by the judge of the surrogate court.

Removal
into
Supreme
Court.

(5) Where any person by whom, or on whose behalf, an application for an allowance may be made under this Act is a patient in an institution under *The Mental Hospitals Act*, at the time of the death of the testator, or at any time before the application under this Act is heard and disposed of, notice of the application for letters probate shall be served upon the Public Trustee on behalf of such person, and the time within which the Public Trustee may make an application for an allowance under this Act shall run from the date of the service of such notice.

Persons in
institutions
under *Mental
Hospitals
Act*.
Rev. Stat.,
c. 392.

(6) Where any person interested in the estate in respect of which an application is made under this Act is a patient in an institution under *The Mental Hospitals Act*, notice of the application for an allowance shall in every case be served upon the Public Trustee who shall have the right to appear and be heard upon the application. 1929, c. 47, s. 5 (3-6); 1937, c. 72, s. 19.

Notice to
Public
Trustee
Rev. Stat.,
c. 392.

5. The judge shall not make any order until he is satisfied upon oath that all persons who are or may be interested in or affected by the order have been served with notice of the application as provided by the rules of court and every such person shall be entitled to be present and to be heard in person or by counsel at the hearing. 1929, c. 47, s. 6.

Notice to
parties
before order.

6. The evidence taken on any such application shall be given orally before the judge and shall be taken down in writing or in shorthand in the same manner as in the case of a trial of an action before a judge without a jury. 1929, c. 47, s. 7.

Evidence
to be given
orally.

7. The judge upon the hearing of the application shall enquire into and consider,—

Matters to
be considered
by judge.

(a) the circumstances of the testator at the time of death;

- (b) the circumstances of the person on whose behalf the application is made;
- (c) the claims which any other person may have as a dependant of the testator;
- (d) any provision which the testator may have made *inter vivos* for dependants or any dependant;
- (e) any services rendered by dependants to the testator;
- (f) any sum of money or any property provided by a dependant for the testator for the purpose of providing a home or assisting in any business or occupation or for maintenance or medical or hospital expenses; and
- (g) generally any other matters which the judge deems should be fairly taken into account in deciding upon the application. 1929, c. 47, s. 8.

Payment for services rendered to testator.

8. Where the dependant has given personal assistance or the gift or loan of money or real or personal property towards the advancement of the testator in any business or occupation, the judge may in and by his order fix a value in money upon such assistance, or may fix the amount or value in money of any gift or loan so made, and may direct that the applicant shall rank as a creditor upon the estate therefor, in the same manner and to the same extent as a judgment creditor upon a simple contract debt, but except as to the amount so fixed as the value of such assistance or as the amount or value in money of such gift or loan an allowance payable under this Act shall be postponed to the claims of creditors of the estate. 1929, c. 47, s. 9.

When widow disqualified.

9. No order shall be made under this Act in favour of a wife who was living apart from her husband at the time of his death under circumstances which would disentitle her to alimony. 1929, c. 47, s. 10.

Limit of amount or value of allowance.

10. Subject to the provisions of section 8 the amount or value of any allowance ordered to be paid shall not exceed the amount to which the person in whose favour the order is made would have been entitled if the testator had died intestate, nor shall the total of all allowances ordered to be paid under this Act out of an estate exceed in value or amount one-half the residue of the estate after the payment of all just debts and funeral and testamentary expenses and succession duty or one-half of the income from such residue calculated at five per centum per annum. 1929, c. 47, s. 11.

11. The judge may direct that the costs of the application ^{Costs.} shall be payable out of the estate or otherwise as he may deem just and may fix the amount of the costs payable by any party, exclusive of necessary disbursements, at a lump sum having regard to the value of the estate and the amount of any allowance applied for or directed by his order. 1929, c. 47, s. 12.

12. Except as to costs, an appeal shall lie to the Court of ^{Appeal.} Appeal from any order made under this Act and the Court of Appeal upon such appeal may annul the order or reduce or increase the amount or value of any allowance fixed by the order and the decision of the court upon the appeal shall be final. 1929, c. 47, s. 13.

13. *The Judges' Orders Enforcement Act* shall apply to any ^{Application} order made under this Act. 1929, c. 47, s. 14. ^{of Rev Stat}
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