UNEDITED

The Surrogate Courts Act

being

Chapter 69 of *The Revised Statutes of Saskatchewan, 1953*
(effective February 1, 1954).

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CHAPTER 69

An Act respecting the Surrogate Courts

SHORT TITLE

Short title

1 This Act may be cited as *The Surrogate Courts Act*.

R.S.S. 1953, c.69, s.1.

INTERPRETATION

Interpretation

2 In this Act:

"administration"

1 "**administration**" includes all letters of administration of the property of deceased persons, whether with or without the will annexed and whether granted for general, special or limited purposes;

"common form business"

2 "**common form business**" means the business of obtaining probate or administration where there is no contention as to the right thereto, including the passing of probates and administration through court when the contest is terminated, and all business of a non-contentious nature to be taken in a surrogate court in matters of testacy and intestacy not being proceedings in a suit, and also the business of lodging caveats against the grant of probate or administration;

"matters and causes testamentary"

3 "**matters and causes testamentary**" includes all matters and causes relating to the grant and revocation of probate of wills or letters of administration;

"will"

4 "**will**" includes "testament" and all other testamentary instruments of which probate may now be granted.

R.S.S. 1940, c.63, s.2; R.S.S. 1953, c.69, s.2.

SURROGATE COURTS

A surrogate court in each judicial district

3(1) There shall be in and for every judicial district from time to time established under *The District Courts Act*, a court of record to be called The Surrogate Court of the Judicial District of (naming the judicial district) over which one judge shall preside: and there shall also be such officers as may be necessary for the exercise of the court's jurisdiction.

(2) Where it is deemed necessary in the public interest one or more additional surrogate judges may be appointed in and for any judicial district, and in the event of such an appointment or appointments being made, each of the judges appointed therefor shall have jurisdiction therein.

R.S.S. 1940, c.63, s.3; R.S.S. 1953, c.69, s.3.

Seal

4(1) Each court shall be provided with a suitable seal to be approved by the Lieutenant Governor in Council, and the judge may cause the same, with the approval of the Lieutenant Governor in Council, to be broken, altered or renewed.

(2) All probates, letters of administration, grants, orders and other instruments and exemplifications and copies thereof respectively, purporting to be sealed with the seal of a surrogate court, shall in all courts and in all parts of Saskatchewan be received in evidence without further proof.

R.S.S. 1940, c.63, s.4; R.S.S. 1953, c.69, s.4.

Sittings where held

5 The sittings of the court shall be held at such places in the judicial district as the Lieutenant Governor in Council appoints.

R.S.S. 19-10, c.63, s.5; R.S.S. 1953, c.69, s.5.

JUDGES

Judges

6 The judge of each district court in the province shall be the judge of the surrogate court for the judicial district in which the district court of which he is judge is situated.

R.S.S. 1940, c.63, s.6; R.S.S. 1953, c.69, s.6.

Substitute judges

7 Any judge may hold court and perform any other duty of a judge of a surrogate court in any judicial district other than that to which he is appointed, on being requested to do so by the judge to whom the duty belongs or upon being authorized to do so by the Attorney General; and the judge so requested or authorized shall have the same powers as the judge in whose district he acts would have.

R.S.S. 1940, c.63, s.7; R.S.S. 1953, c.69, s.7.

Oath of judge

8 Every judge shall, before entering upon the duties of his office, take the following oath:

I, _____ of the _____ of _____ in the Province of Saskatchewan, do swear that I will well and truly serve Our Sovereign Lady the Queen in the office of Judge of the Surrogate Court of the Judicial District of (*naming the judicial district*) and that I will truly and faithfully, according to the best of my ability and knowledge, execute the several duties imposed upon me as a judge of the said court. So help me God.

Sworn at _____ this _____ day of _____, 19_____, before me.

R.S.S. 1940, c.63, s.8; R.S.S. 1953, c.69, s.8.

SURROGATE REGISTRAR AND CLERKS

Registrar

9 There shall be an officer to be called the Surrogate Registrar, who shall be deemed an officer of the Court of Queen's Bench.

R.S.S. 1940, c.63, s.9; R.S.S. 1953, c.69, s.9.

Clerk of court

10(1) There shall be a clerk for every surrogate court.

(2) Any act or thing which a clerk is empowered to do may be done by his deputy.

R.S.S. 1940, c.63, s.10; 1942, c.12, s.2; R.S.S. 1953, c.69, s.10.

Oath of clerk

11 Every clerk and deputy clerk shall, before entering upon the duties of his office, take the following oath:

I, _____, do solemnly and sincerely promise and swear that I will diligently and faithfully execute the office of clerk (*or* deputy clerk, *as the case may require*) of the Surrogate Court of the Judicial District of (*naming the judicial district*), and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done by myself or others on any wills or testamentary papers or other documents or papers committed to my charge. So help me God.

R.S.S. 1940, c.63, s.11; 1942, c.12, s.3; R.S.S. 1953, c.69, s.11.

Clerk's office

12(1) The clerk may hold his office in the court house of the district and a room therein may be provided for that purpose, and in the event of there being no room in the court house he may, until a room is provided, hold his office at such place as the judge directs.

(2) The clerk's office shall be a depository for the wills of living persons given to him for safe keeping, and all persons may deposit their wills there upon payment of such fees and under such regulations as may be directed by rules of court.

(3) A solicitor retiring from practice, the personal representative of a deceased solicitor, a trust company which has ceased to have an office in the province or which has ceased to be an approved trust company, or the liquidator or receiver of a trust company, may deposit with the clerk for safe keeping any will in the custody of such solicitor, personal representative or trust company, without specific authority from the testator, and the clerk shall accept for safe keeping any will tendered to him for that purpose. When a will deposited under this subsection is withdrawn from his custody, a fee of $1 shall be paid to the clerk.

R.S.S. 1940, c.63, s.12; 1945, c.23, s.1; R.S.S. 1953, c.69, s.12.

Clerks preserve testamentary instruments

13 The clerk shall file and preserve all original wills and testamentary instruments of which probate or letters of administration with will annexed are granted, and all other papers used in any matter in the court of which he is clerk, subject to such regulations as may be made by rule of court for their due preservation and convenient inspection.

R.S.S. 1940, c.63, s.13; R.S.S. 1953, c.69, s.13.

Clerks transmit to registrar list of probates, etc.

14(1) On the third day of every month, or oftener if required by rules of court, the clerk shall transmit by mail to the surrogate registrar a list in such form and containing such particulars as are required by the rules, of the grant of probate and administration made by the court up to the last day of the preceding month and not included in any previous return, and also a copy certified by him to be a correct copy of every will to which any such probate or administration relates; and he shall in like manner make a return of every revocation of a probate or administration.

(2) The clerk shall also so transmit an additional certified copy of every will under the terms of which real or personal property, or any right or interest therein, or the proceeds thereof, are vested in any person as executor or trustee for any religious, educational, charitable or public purpose, or are to be applied by him to or for any such purpose.

(3) Within seven days after receipt of a copy of any such will the surrogate registrar shall send to every religious, educational, charitable or public institution benefited thereby a written notice of the bequest, giving any particulars thereof mentioned in the will.

(4) The surrogate registrar shall keep a separate index and file of wills, certified copies of which arc received by him under subsection (2), and such file may be inspected by any person during office hours.

R.S.S. 1910, c.63, s.14; R.S.S. 1953, c.69, s.14.

Transmission of documents when new districts formed

15 When a portion of the territory of a judicial district has been detached therefrom and annexed to or formed into another judicial district, the judge of the surrogate court of the first mentioned district may, on the application of any person interested in any matter or proceeding begun or taken in such court, order that the clerk of that court transmit to the clerk of the surrogate court of the new or enlarged district all original wills and testamentary instruments, letters probate and letters of administration and all other papers and documents of record in his office relating to or deposited in the course of such matter or proceeding, if it might properly have been begun or taken in the new or enlarged district had that district been in existence when the matter or proceeding originated; and thereafter all proceedings may be taken or continued in the new or enlarged district in the same manner and with the same effect as if it had originated therein.

R.S.S. 1940, c.63, s.15; R.S.S. 1953, c.69, s.15.

Registrar and clerk not to take fees privately

16 The surrogate registrar and the clerk and deputy clerk of a surrogate court shall not for profit or reward draw or advise upon any will or other testamentary paper or upon any paper or document connected with the duties of his office.

R.S.S. 1940, c.63, s.16; 1942, c.12, s.4; R.S.S. 1953, c.69, s.16.

JURISDICTION AND POWERS OF THE SURROGATE COURTS

Testamentary jurisdiction

17 All jurisdiction and authority in relation to matters and causes testamentary and in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons having estate or effects in Saskatchewan, and all matters arising out of or connected with the grant or revocation of probate or administration, vested in or exercised by the Supreme Court of the North-West Territories immediately prior to the sixteenth day of September, 1907, shall be exercised in the name of Her Majesty in the several surrogate courts; but this provision shall not be construed as depriving the Court of Queen's Bench of jurisdiction in such matters.

R.S.S. 1940, c.63, s.17; R.S.S. 1953, c.69, s.17.

Jurisdiction generally

18(1) Every surrogate court shall have full power, jurisdiction and authority:

1 to issue process and hold cognizance of all matters relative to the granting of probate of wills and letters of administration, and to grant probate of wills and letters of ad ministration of the property of persons dying intestate and to revoke the same;

2 to hear and determine all questions, causes and suits in relation to such matters and to all matters and causes testamentary;

3 to require any executor or administrator to bring in his accounts of the administration of any estate in respect of which letters of administration or letters probate have issued, and such accounts having been brought in, to examine and pass the same;

4 upon the accounts of an executor or administrator being passed, or such passing dispensed with, to order that the executor or administrator be discharged, and in the case of an administrator or administrator with the will annexed, that the bond be cancelled or delivered up to the administrator or his solicitor.

(2) The court on passing the accounts of an executor or administrator shall have full jurisdiction to enter into an d make full inquiry and accounting of and concerning the whole property which the deceased was possessed of or entitled to and the administration and disbursement thereof, including inquiry and accounting on the basis of wilful default and neglect, in as full and ample a manner as could be done in an action for administration and for such purpose may take evidence and decide all disputed matters arising in such accounting.

(3) Subject to the provisions contained herein every surrogate court shall also have the same powers, and the grants and orders of every surrogate court shall have the same effect throughout Saskatchewan and in relation to the estates of deceased persons as the Supreme Court of the North-West Territories and its grants and orders respectively had immediately prior to the sixteenth day of September, 1907, in relation to those matters and to causes testamentary within its jurisdiction, and all duties which by statute or otherwise were imposed on or exercised by the said court or a judge thereof in respect of probates, administrations and matters and causes testamentary, and otherwise, shall be performed by the several surrogate courts and the judges thereof within their respective jurisdictions; but no action for legacies or for the distribution of residues shall be entertained by a surrogate court.

R.S.S. 1910, c.63, s.18; R.S.S. 1953, c.69, s.18.

Appointment of representative in proceedings

19 Where it appears that a deceased person who was interested in the matters in question has no personal representative, the court or judge may either proceed in the absence of any person representing his estate or may appoint some person to represent the estate for all the purposes of the action or other proceeding, on such notice as may seem proper, notwithstanding that the estate in question may have a substantial interest in the matters, or that there may be active duties to be performed by the person so appointed, or that he may represent interests adverse to the plaintiff or person having conduct of the proceedings, and the order so made and any orders consequent thereon shall bind the estate of such deceased person in the same manner as if a duly appointed personal representative of such person had been a party to the action or proceeding.

1943, c.11, s.2; R.S.S. 1953, c.69, s.19.

Court to which grant of probate or administration belongs

20(1) The grant of probate or letters of administration shall belong to the court of the judicial district in which the testator or intestate had at the time of his death his fixed place of abode.

(2) If the testator or intestate had no fixed place of abode in or resided out of Saskatchewan at the time of his death the grant may be made by the court of any district in which the testator or intestate had property at the time of his death.

(3) In other cases the grant of probate or letters of administration shall belong to the court of any district.

R.S.S. 1910, c.63, s.19; R.S.S. 1953, c.69, s.20.

Where judge is entitled to probate, application made to judge in adjoining district

21(1) Where the person or one of the persons entitled to apply for probate of a will or for letters of administration is judge of the surrogate court having jurisdiction in the matter and he does not renounce, application by him for such probate or letters and any subsequent application in the matter of the estate by him or any other person may be made to the judge of the court of an adjoining district who shall have the same authority with respect to the application, and generally in all matters connected with the estate, as if he were the judge of the court having jurisdiction.

(2) All proceedings shall be carried on in the court having jurisdiction.

R.S.S. 1940, c.63, s.20; R.S.S. 1953, c.69, s.21.

Effect of probate and administration

22 Probate or letters of administration by whatever court granted shall unless revoked have effect over the real and personal property of the deceased in all parts of Saskatchewan.

R.S.S. 1940, c.63, s.21; R.S.S. 1953, c.69, s.22.

POWER TO TRY BY JURY

Questions of fact

23(1) Every surrogate court may cause any question of fact arising in any proceeding under this Act to be tried by a jury before a judge of the court.

(2) Upon an order being made allowing a trial by jury, such trial shall take place at some ensuing sittings of the court and the jury shall be summoned and the trial be conducted in the same manner as trials by jury in the Court of Queen's Bench, and the parties shall be entitled to their right of challenge.

(3) For all purposes of or auxiliary to the trial of questions of fact by a jury, and in respect of new trials, the surrogate courts and the judges thereof respectively shall have the same jurisdiction, power and authority in all respects as belong to the Court of Queen's Bench and the judges thereof for like purposes.

R.S.S. 1940, c.63, s.22; R.S.S. 1953, c.69, s.23.

Procedure on trial

24 When a question is ordered to be tried by a jury before a judge of a surrogate court the question shall be reduced into writing in such form as the court directs and at the trial the jury shall be sworn to try the question and a true verdict give thereon according to the evidence.

R.S.S. 1940, c.63, s.23; R.S.S. 1953, c.69, s.24.

SITTINGS

Sittings

25 Sittings of the court for hearing and determining matters and causes in contentious cases and business of a contentious character may be held at such time and place as the judge may, upon application, direct.

R.S.S. 1940, c.63, s.21; R.S.S. 1953, c.69, s.25.

WITNESSES, EVIDENCE, ETC.

Attendance of parties or witnesses

26 Every court may:

(a) require the attendance of any party in person or of any person whom it thinks fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary;

(b) examine or cause to be examined parties and witnesses orally upon oath or affirmation as the case may require, and either before or after, or with or without, such examination receive their or any of their affidavits or affirmations;

and the court may, by writ of subpoena or *subpoena duces tecum*, require such attendance and the production of any deeds, evidence or writings before the court or otherwise.

R.S.S. 1940, c.63, s.25; R.S.S. 1953, c.69, s.26.

Orders and proceedings in respect of the production of testamentary instruments

27(1) Whether any suit or other proceeding is or is not pending in the court with respect to any probate or on administration, every court may, on motion or petition or otherwise, in a summary way, order any person to produce and bring before the clerk or otherwise as the court directs, any paper or writing being or purporting to be testamentary which is shown to be in the possession or under the control of such person.

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person but it appears that there arc reasonable grounds for believing that he has knowledge thereof the court may direct him to attend for the purpose of being examined before the clerk or in open court or upon interrogatories respecting the same. Such person shall be bound to answer such questions or interrogatories and, if so ordered, to produce and bring in the paper or writing, and shall be subject to the like process of contempt, in case of default in not attending or in not answering such questions or interrogatories or not bringing in such paper or writing, as he would have been subject to if he had been a party to a suit in the court and had made such default; and the costs of such motion, petition or other proceeding shall be in the discretion of the court.

R.S.S. 1940, c.63, s.26; R.S.S. 1953, c.69, s.27.

Administration of oaths

28 The judges and clerks of the surrogate courts and the surrogate registrar shall have full power to administer oaths in matters and causes testamentary and in all other matters in any of the said courts; and commissioners for oaths, justices of the peace and notaries public shall also have full power respectively to administer oaths in all matters and causes testamentary and in all other matters in the said courts to parties desirous of making affidavit or deposition before them.

R.S.S. 1940, c.63, s.27; R.S.S. 1953, c.69, s.28.

EVIDENCE IN CONTENTIOUS MATTERS

Mode of taking evidence

29 Subject to the rules of court or orders in force respecting surrogate matters, the witnesses and where necessary the parties in all contentious matters where their attendance can be had shall be examined orally by or before the judge in open court; and, subject to any such rules or orders, the parties may verify their respective cases by affidavit; but the deponent in every such affidavit shall, on the application of the opposite party, be subject to cross-examination by or on behalf of the opposite party orally in open court, and after cross-examination may be reexamined orally in open court by or on behalf of the party by whom the affidavit was filed.

R.S.S. 1940, c.63, s.28; R.S.S. 1953, c.69, s.29.

COMMISSIONS TO EXAMINE WITNESSES

Power to issue commissions

30 Where a witness is outside Saskatchewan, or where commissions by reason of his illness or otherwise the court does not think fit to enforce his attendance in court, the court may issue an order for his examination on oath upon interrogatories or otherwise, or, if the witness is within the jurisdiction of the court, may order his examination on oath upon interrogatories or otherwise before any person named in the order for the purpose.

R.S.S. 1940, c.63, s.29; R.S.S. 1953, c.69, s.30.

Provisions of certain Acts to supply

31 All the powers given to the Court of Queen's Bench by law for enabling that court to issue commissions and make orders for the examination of witnesses in actions there pending and to enforce such examination, and all the provisions of law relating to the Court of Queen's Bench for enforcing examination or otherwise applicable thereto and to the witnesses examined, shall extend and be applicable to the surrogate courts and to the examination of witnesses under the commissions and orders of the said courts and to the witnesses examined, as if the matters before them were actions pending in the Court of Queen's Bench.

R.S.S. 19tJ 0, c.63, s.30; R.S.S. 1953, c.69, s.31.

RULES OF EVIDENCE

Rules of evidence

32 The rules of evidence observed in the Court of Queen's Bench shall be applicable to and observed in the trial of all questions of fact in the surogate courts.

R.S.S. 194 0, c.63, s.31; R.S.S. 1953, c.69, s.32.

ORDERS AND JUDGMENTS HOW ENFORCED

Enforcement of orders and judgments

33 Every surrogate court shall have the like powers, jurisdiction and authority for enforcing the attendance of persons required by it and for punishing persons failing, neglecting or refusing to produce deeds, evidence or writings or refusing to appear or to be sworn or to make affirmation or to give evidence, or guilty of contempt, and generally for enforcing orders and judgments made or given by the court under this Act or under any other Act giving jurisdiction to surrogate courts, and otherwise in relation to the matters to be inquired into and done by or under the orders made under this Act, as are vested in the Court of Queen's Bench in relation to any suit or matter pending in that court.

R.S.S. 1940, c.63, s.32; R.S.S. 1953, c.69, s.33.

REMOVAL TO THE COURT OF QUEEN'S BENCH

Contentious matters referred by consent to Court to Queen's Bench

34 In every case in which there is contention as to the grant of probate or administration and the parties in such case thereto agree, the matter in dispute shall be referred to and determined by the Court of Queen's Bench on a case to be prepared; and the surrogate court having jurisdiction in the matter shall not grant probate or administration until the contention is terminated and disposed of by judgment or otherwise.

R.S.S. 1940, c.63, s.33; R.S.S. 1953, c.69, s.34.

Contentious matters referred by judge's order

35(1) Any cause or proceeding in a surrogate court in which any contention arises as to the grant of probate or administration, or in which any disputed question may be raised, as to law or facts, relating to matters and causes testamentary or to inquiry and accounting on the basis of wilful default or neglect shall be removable by any party to the cause or proceeding into the Court of Queen's Bench by order of a judge of the said court to be obtained on a summary application supported by affidavit, of which reasonable notice shall be given to the other parties concerned.

(2) The judge making the order may impose such terms as to payment or security for costs or otherwise as to him seems fit; but no cause or proceeding shall be so removed unless it is of such a nature and of such importance as to render it proper that the same should be withdrawn from the jurisdiction of the surrogate court and disposed of by the Court of Queen's Bench nor unless the estate of the deceased exceeds $5,000 in value.

R.S.S. 1910, c.63, s.34; 1949, c.25, s.35.

Power of Court of Queen's Bench

36 Upon any cause or proceeding being so removed the Court of Queen's Bench shall have full power to determine the same, and may cause any question of fact arising therein to be tried by a jury and otherwise deal with the same as with any cause or claim originally entered in the said court; and the final order or judgment made by the said court in any cause or proceeding so removed shall, for the guidance of the surrogate court, be transmitted by the local registrar of the Court of Queen's Bench for the district in which such judgment is given to the clerk of the surrogate court from which the cause or proceeding was removed.

R.S.S. 1940, c.63, s.35; R.S.S. 1953, c.69, s.36.

APPEALS

Appeals

37(1) Subject to the rules of court, any person considering himself aggrieved by any order, sentence, judgment or decree of a surrogate court, or being dissatisfied with the determination of the judge thereof in point of law in any matter or cause under this Act, may:

(a) within fifteen days next after such order, sentence, judgment, decree or determination, appeal therefrom to a judge of the Court of Queen's Bench sitting in chambers; or

(b) within thirty days next after such order, sentence, judgment, decree or determination, appeal therefrom to the Court of Appeal;

and the judge or court shall hear and determine the appeal; but no appeal shall lie unless the value of the property, goods, chattels, rights or credits to be affected by such order, sentence, judgment, decree or determination exceeds $200.

(2) The judge of the surrogate court, or the appellate court or a judge thereof, may, either before or after the expiry of the period mentioned in clause (a) or (b) of subsection (1), enlarge the time thereby allowed for taking the appeal.

(3) If an appeal is taken under clause (a) of subsection (1) a further appeal shall lie to the Court of Appeal.

R.S.S. 1940, c.63, s.36; R.S.S. 1953, c.69, s.37.

PRACTICE-PROOFS TO LEAD GRANT

Practice of the courts

38 Unless otherwise provided by this Act or by rules of court the practice of the surrogate courts shall, so far as the circumstances of the case admit, be according to the practice in the Court of Probate in England as it stood on the fifteenth day of July, 1870.

R.S.S. 1940, c.63, s.37; R.S.S. 1953, c.69, s.38.

Proof of execution of will

39(1) The due execution of a will shall be proved by one of the subscribing witnesses by an affidavit in form A. An affidavit of plight and condition shall not be necessary unless required by the judge. When required it may be in form B.

(2) If the testator executed the will by making his mark, or if at the time of execution of the will the testator was blind, the proof shall show that before its execution the will was read over to the testator and that he had a knowledge of its contents and appeared perfectly to understand the same.

(3) If the subscribing witnesses are dead, or if for any reason no affidavit can be obtained from any of them, the due execution of the will may be established by proof by affidavit of the handwriting and signatures of the witnesses or of the testator, or both, as may be required by the judge, or resort may be had to other persons, if any, who may have been present at the execution of the will:

Provided that in any case the judge may require further or other proof of such execution or may require proof in solemn form.

(4) If at the time a will is executed the subscribing witnesses make affidavits of execution and the will is deposited in the clerk's office pursuant to subsection (2) of section 12, accompanied by the affidavits of execution and by a statutory declaration of the solicitor by whom the will was drawn setting forth that the will was executed on a specified date, then the affidavits of execution shall be pri1net facie proof of the due execution of the will. The said statutory declaration shall be made before a solicitor or justice of the peace, other than a partner, an employer or an employee of the declarant.

1944, c.18, s.2; R.S.S. 1953, c.69, s.39.

Proof requisite when deceased resided out of province

40 On every application to a surrogate court for probate of will or letters of administration where the testator or intestate was resident in Saskatchewan at the time of his death, the place of abode of the testator or intestate at the time of his death shall be made to appear by affidavit of the person or some one of the persons making the application; and thereupon and upon proof of the will, or in case of intestacy upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted under the seal of the court to which the application has been made.

R.S.S. 1940, c.63, s.38; R.S.S. 1953, c.69, s.40.

Proof requisite when deceased resided out of province

41 On every application for probate of a will or letters of administration where the testator or intestate had no fixed place of abode in or resided out of Saskatchewan at the time of his death, the same shall be made to appear by affidavit of the person or some one of the persons applying for the probate or administration, and it shall also be made to appear by affidavit that the deceased died leaving personal or real property within the judicial district in the court of which the application is made, or leaving no personal or real property in Saskatchewan, as the case may be; and thereupon, and upon proof of the will or in case of intestacy upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted under the seal of the court to which application is made.

R.S.S. 1940, c.63, s.39; R.S.S. 1953, c.69, s.41.

Affidavit grounding application for grant conclusive for exercise of jurisdiction if acted on

42 The affidavit as to the place of abode and property of a testator or intestate under sections 40 and 41, for the purpose of giving a particular court jurisdiction, shall be conclusive for the purpose of authorizing the exercise of such jurisdiction; and no grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the particular district at the time of his death or had not property therein at the time of his death; and every probate and administration granted by a surrogate court shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder notwithstanding the want of or defect in such affidavit; but, if it is made to appear that the place of abode of the testator or intestate or the situation of his property has not been correctly stated in the affidavit, the judge may stay all further proceedings and make such order as to the costs of the proceedings before him as he thinks just.

R.S.S. 1940, c.63, s.40; R.S.S. 1953, c.69, s.42.

Proof requisite for obtaining grant to party not next of kin

43 If application is made for letters of administration by a person not entitled to the same as next of kin to the deceased, the next of kin or others having or pretending interest in the property of the deceased, resident in Saskatchewan, shall be cited or summoned to show cause why the administration should not be granted to the person applying therefor; and, if neither the next of kin nor any of the kindred of the deceased resides in Saskatchewan, then a copy of the citation or summons shall be served or published in such manner as the judge may upon application *ex parte* direct.

R.S.S. 1940, c.63, s.41; R.S.S. 1953, c.69, s.43.

Temporary administration

44 If the next of kin usually residing in Saskatchewan and regularly entitled to administer is absent from the province, the court having jurisdiction in the matter may in its discretion grant a temporary administration and appoint the applicant or such other person as the court thinks fit to be administrator of the property of the deceased person for a limited time or to be revoked upon the return of such next of kin.

R.S.S. 1940, c.63, s.42; R.S.S. 1953, c.69, s.44.

Security

45 The administrator so appointed shall give such security as the court directs and shall have all the rights and powers of a general administrator and shall be subject to the immediate control of the court.

R.S.S. 1940, c.63, s.43; R.S.S. 1953, c.69, s.45.

Grant of administration to attorney

46 The widow or the next of kin residing within or without Saskatchewan and regularly entitled to administer may appoint an individual, or a trust company approved by the Lieutenant Governor in Council under the provisions of *The Trust Companies Act*, as her or his attorney to apply for and receive a grant of administration, and in such case the court may grant administration to the attorney accordingly.

R.S.S. 1940, c.63, s.44; R.S.S. 1953, c.69, s.46.

Duty of clerk to prepare documents on request

47(1) Where probate of a will or letters of administration are sought and the value of the property of the deceased does not exceed $500 the clerk shall, on demand of any one entitled thereto other than a creditor, prepare the necessary papers to lead to grant, including all papers and proofs required by *The Succession Duty Act* and the bond, if any, and administer the necessary oaths; and the total amount to be charged to the applicant for all the proceedings and services shall be $4.

(2) In such cases the clerk shall endorse and sign on the letters probate or letters of administration, as the case may be, the following notation: "The value of the property in this estate does not exceed $500".

(3) Moneys received by the clerk under subsection (1) shall be paid into the consolidated fund.

1946, c.18, s.2; R.S.S. 1953, c.69, s.47.

Power of court to order disposal of personal property

48(1) Where it appears to the court that the value of the personal property of a deceased does not, so far as can be reasonably ascertained, exceed $500, the court may without the grant of probate or administration, as the case may be, order that the personal property be paid or delivered to such person as the court directs to be disposed of by him as it directs, in:

(a) paying the reasonable funeral expenses;

(b) paying the debts of the deceased;

(c) paying over any balance to the beneficiaries or next of kin as the case may require or, if there is no next of kin or if none can be conveniently found, paying over the balance to the Provincial Treasurer to be paid into the consolidated fund.

(2) A receipt given by a person for personal property received by him pursuant to an order of the court made under subsection (1) shall constitute a sufficient discharge of the person paying over or delivering the property from liability in respect thereof.

(3) Where a balance is paid over to the Provincial Treasurer under subsection (1) and any claim thereto is subsequently established to the satisfaction of the court, the Provincial Treasurer, with the authority of the court, may pay the claim out of the consolidated fund.

(4) The provisions of this Act with respect to the grant of probate or ad ministration, inventories and bonds on administration shall not apply in cases coming within subsection (1).

194 6, c.18, s.2; 1949, c.25, s.3; R.S.S. 1953, c.69, s.48.

NOTICE OF APPLICATIONS SO AS TO AVOID DOUBLE GRANTS.

Notice of applications for grants of probates, to registrar by clerks

49 In case of an application to a surrogate court for the grant of probate or administration, none thereof shall be transmitted by the court by letter postpaid to the registrar by the next post after the application and the notice shall specify the name and description or addition, if any, of the testator or intestate, the time of his death and the place of his abode at his decease as stated in the affidavit or affidavits made in support of the application, the name of the person by whom the application has been made and such other particulars as may be directed by the rules of court in that behalf.

R.S.S. 1940, c.63, s.45; R.S.S. 1953, c.69, s.49.

Proceedings stayed till certificate received from registrar

50 Except upon special order or judgment of the court, no probate or administration shall be granted in pursuance of the application until the clerk has received a certificate under the hand of the registrar that no other application appears to have been made in respect of the property of the same deceased person, which certificate the registrar shall forward as soon as may be to the clerk.

R.S.S. 1940, c.63, s.46; R.S.S. 1953, c.69, s.50.

Registrar files notices

51 All notices in respect of applications in the several courts shall be filed and kept by the registrar.

R.S.S. 1940, c.63, s.47; R.S.S. 1953, c.69, s.51.

Duty of registrar with reference to notices

52 The registrar shall, with reference to every such notice, examine all notices of applications received from the several other surrogate court clerks so far as appears to be necessary to ascertain whether or not application for probate or administration in respect of the property of the same deceased person has been made in more than one surrogate court or whether notice of an appointment by the Court of Queen's Bench has been received, and he shall communicate with the clerks as occasion may require in relation to such applications; and all appointments by the Court of Queen's Bench shall be noted by the registrar in the application book.

R.S.S. 1940, c.63, s.48; R.S.S. 1953, c.69, s.52.

Proceedings if application has been made to more than one surrogate court

53 Where it appears by the certificate of the registrar that application for probate or administration has been made to two or more courts the judges of such courts respectively shall stay proceedings therein, leaving the parties to apply to one of the judges of the Court of Queen's Bench to give such direction in the matter as to him seems necessary.

R.S.S. 1940, c.63, s.49; R.S.S. 1953, c.69, s.53.

Judgment as to what court shall have jurisdiction

54 On such application the judge of the Court of Queen's Bench shall inquire into the matter in a summary way and jurisdiction adjudge and determine what surrogate court has jurisdiction and shall proceed in the matter.

R.S.S. 1940, c.63, s.50; R.S.S. 1953, c.69, s.54.

Order as to costs

55 The judge of the Court of Queen's Bench may order costs to be paid by any of the applicants and the order shall be enforced by the Court of Queen's Bench.

R.S.S. 1940, c.63, s.51; R.S.S. 1953, c.69, s.55.

Judge's decision final

56 The determination of the judge shall be final and conclusive and the registrar shall without delay transmit a certified copy thereof to the clerks of the several courts wherein applications have been made.

R.S.S. 1940, c.63, s.52; R.S.S. 1953, c.69, s.56.

CAVEATS

Practice respecting caveats

57 Caveats against the grant of probate or administration may be lodged with the registrar or with the clerk of any court, and subject to rules of court the practice and procedure under such caveats shall as nearly as may be correspond with the practice and procedure under caveats in use on the fifteenth day of July, 1870, in the Court of Probate in England.

R.S.S. 1940, c.63, s.53; R.S.S. 1953, c.69, s.57.

Notice of caveats to be transmitted to proper courts

58 Immediately on a caveat being lodged the clerk of the court shall without delay send a copy thereof to the registrar to be entered among the caveats lodged with him; and, upon notice of an application being received from the clerk, the registrar shall without delay forward to the clerk notice of any caveat that has been lodged touching such application, and the notice shall accompany or be embodied in the certificate mentioned in section 50.

R.S.S. 1940, c.63, s.54; R.S.S. 1953, c.69, s.58.

COPIES OF WILLS

Official copy obtainable

59 An official copy of the whole or any part of a will, or an official certificate of the grant of letters of administration, may be obtained from the clerk of the surrogate court where the will has been proved or the administration granted, on payment of such fees as may be fixed by rule of court.

R.S.S. 1940, c.63, s.55; R.S.S. 1953, c.69, s.59.

ADMINISTRATION PENDENTE LITE

Administration *pendente lite*

60(1) Pending an action touching the validity of the will of a deceased person or for obtaining, recalling or revoking any probate or grant of administration, the court in which an action is pending may appoint an administrator of the property of the deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing the residue of the property.

(2) Every such administrator shall be subject to the immediate control of the court and shall act under its direction; and the court may direct that he shall receive out of the property of the deceased such reasonable remuneration as the court thinks fit.

R.S.S. 1940, c.63, s.56; R.S.S. 1953, c.69, s.60.

ADMINISTRATION WITH WILL ANNEXED

Bond

61 Where administration is granted with the will annexed a bond shall, unless it is otherwise provided by law, be given to the judge of the court as in other cases and with like effect, and, unless otherwise provided for by this Act or by rule of court, the practice and procedure with respect to such administrations and with respect to such bonds and the assignment thereof shall, so far as the circumstances of the case admit, be according to the practice in such cases in the Court of Probate in England on the fifteenth day of July, 1870.

R.S.S. 1940, c.63, s.57; R.S.S. 1953, c.69, s.61.

Application for administration deposes to value of the realty

62(1) In every case where any person applies to be appointed an administrator with the will annexed and a bond is by law required to be given, he shall in his application state and in his affidavit of the value of the property devolving depose to the value or probable value of all the real estate over which or over any estate in which the executor or executors named in the will or codicil were by the said will or codicil clothed with any power of disposition, or of all the real estate which in case of no executor being appointed was by the will or codicil directed to be disposed of without any person being appointed to effect such disposition.

(2) In every case the bond to be given by such person upon his obtaining the grant shall, as respects the amount of the penalty of the bond and the justification of the sureties, include the amount of the value or probable value so stated and deposed to; and the condition of the bond shall, in addition to the other provisions thereof, provide that the administrator shall well and truly pay over and account to the person or persons entitled to the same for all moneys and assets to be received by him for or in consequence of the exercise by him of any power over real estate created by the will or codicil and which may be exercised by him.

R.S.S. 1940, c.63, s.58; R.S.S. 1953, c.69, s.62.

POWER AS TO APPOINTMENT OF ADMINISTRATOR

Power as to appointment of administrator under special circumstances

63 Where a person has died wholly intestate as to his property, or leaving a will affecting property but without having appointed an executor willing and competent to take probate, or where the executor was at the time of the death of the testator resident out of Saskatchewan and it appears to the court to be necessary or convenient in such case, by reason of the insolvency of the estate of the deceased or other special circumstances, to appoint some person to be the administrator of the property of the deceased or of any part of such property, other than the person who if this section had not been enacted would by law have been entitled to a grant of administration of such property, it shall not be obligatory upon the court to grant administration to the person who, if this section had not been enacted, would by law have been entitled to a grant thereof; but the court in its discretion may appoint such person as the court thinks fit upon his giving such security, if any, as the court directs; and every such administration may be as limited as the court thinks fit.

R.S.S. 1940, c.63, s.59; R.S.S. 1953, c.69, s.63.

After grant of administration no person to act as executor

64 After a grant of administration no person shall have power to sue, or prosecute any action, or otherwise act as executor of the deceased as to the property comprised in or affected by the grant of administration, until such administration has been recalled or revoked.

R.S.S. 1940, c.63, s.60; R.S.S. 1953, c.69, s.64.

REVOCATION OF TEMPORARY GRANTS

Effect on pending actions

65 Where, before the revocation of any temporary administration, proceedings have been commenced by or against the administrator so appointed, the court in which the proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration and of the grant of probate or administration which has been made consequent thereupon, and the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceedings had been originally commenced by or against such new executor or administrator but subject to such conditions and variations, if any, as the court directs.

R.S.S. 1940, c.63, s.61; R.S.S. 1953, c.69, s.65.

VALIDITY OF PAYMENTS UNDER REVOKED GRANTS

Payments under probate or administration afterwards revoked are valid

66 Where any probate or administration is revoked, all payments *bona fide* made to an executor or administrator under such probate or administration before the revocation shall be a legal discharge to the person making the same; and the executor or administrator who has acted under the revoked probate or administration may retain and reimburse himself in respect of payments made by him which the person to whom probate or administration is afterwards granted might have lawfully made.

R.S.S. 1940, c.60, s.62; R.S.S. 1953, c.69, s.66.

Person, making payment upon probate granted indemnified, etc.

67 Subject to the provisions of *The Succession Duty Act* all persons and corporations making or permitting to be made any payment or transfer *bona fide* upon any probate or letters or administration granted in respect of the estate of any deceased person under the authority of this Act shall be indemnified and protected in so doing notwithstanding any defect or circumstance whatsoever affecting the validity of the probate or letters of administration.

R.S.S. 1940, c.63, s.63; R.S.S. 1953, c.69, s.67.

EXECUTOR RENOUNCING

Right of executor renouncing probate ceases absolutely

68 Where a person renounces probate of the will of which he is appointed an executor, his rights in respect of the executorship shall wholly cease; and the representation to the testator and the administration of his effects shall and may without any further renunciation go, devolve and be committed in like manner as if he had not been appointed executor.

R.S.S. 1940, c.63, s.64; R.S.S. 1953, c.69, s.68.

SECURITIES

Persons receiving grants of administration give bonds, etc.

69 Except where otherwise provided by law, every person to whom a grant of administration is committed shall give a bond to the judge of the court from which the grant is made to inure for the benefit of the judge of the court for the time being, with one or more sureties as may be required by the judge conditioned for the due collecting, getting in and administering of the real and personal estate of the deceased; and the bond shall be in the form prescribed by rules of court; and in cases not provided for by such rules the bond shall be in such form as the judge by special order directs:

Provided that the judge may dispense with the giving of a bond where he is satisfied that proper inquiry has been made and it is sworn that to the best of the deponent's information and belief there are no debts for which the estate is or may be liable and:

(a) the estate does not exceed in value the sum of $1,000; or

(b) the administrator is the beneficiary; or

(c) all parties who are or may be beneficially interested in the estate consent thereto in writing;

Provided further that if there arc debts for which the estate is or may be liable the judge may dispense with the giving of a bond where the creditors and all parties who are or may be beneficially interested in the estate consent thereto in writing.

R.S.S. 1940, c.63, s.65; 1943, c.11, s.3; 1944, c.18, s.3; R.S.S. 1953, c.69, s.69.

Penalty in bonds, etc., and as to dividing liabilities of sureties

70(1) Subject to the provisions of section 62 the bond shall be in a penalty of double the amount under which the real and personal estate and effects of the deceased have been sworn, unless the judge directs that the same shall be reduced; and the judge may also direct that more bonds than one be given so as to limit the liability of any surety to such amount as the judge thinks reasonable.

(2) For the purpose of subsection (1) the sworn value of the real and personal estate and effects of the deceased shall be decreased, in the case of land, by the amount of any mortgage or other encumbrance registered against the land and by the unpaid balance of any purchase price due in respect thereof and, in the case of chattels, by the amount of any registered charge thereon and of any liens or charges against the same created by virtue of any statute excepting executions against goods.

R.S.S. 1940, c.63, s.66; 1917, c.31, s.2; R.S.S. 1953, c.69, s.70.

Power of courts as to assignment of bonds

71 The judge, on application made on motion or petition in a summary way and on being satisfied that the condition of the bond has been broken, may order the clerk to assign the same to some person to be named in the order; and such person, his executors or administrators shall thereupon be entitled to sue on the bond in his own name as if the same had been originally given to him instead of to the judge, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond.

R.S.S. 1940, c.63, s.67; R.S.S. 1953, c.69, s.71.

New or additional security in certain cases

72(1) Where a surety for an administrator dies or becomes insolvent or where for any other reason the security furnished by an administrator becomes inadequate or insufficient, the judge may require other or additional security to be furnished, and if the same is not furnished as directed he may revoke the grant of administration.

(2) The order may be made by the judge of his own motion or on the application of any person interested.

R.S.S. 1910, c.63, s.68; R.S.S. 1953, c.69, s.72.

Substitution of security

73(1) Where a surety for an administrator desires to be discharged from his obligation, or where an administrator desires to substitute other security for that furnished by him, the judge may allow other security to be furnished in lieu of that of such surety or of the security so furnished, on such terms as to the judge may seem proper, and may direct that, on the substituted security being furnished and, if deemed advisable the accounts of the administrator being passed, the surety or sureties be discharged.

(2) The application may be made *ex parte* or on such notice as the judge directs.

R.S.S. 1940, c.63, s.69; R.S.S. 1953, c.69, s.73.

Reduction of security

74 The amount of the security may from time to time be reduced by the judge to such an amount as will, in his opinion, secure the due collecting, getting in and administering of the real and personal estate of the deceased shown to be in the hands of the administrator after the passing of his accounts by the court.

R.S.S. 1940, c.63, s.70; R.S.S. 1953, c.69, s.74.

ACCOUNTS OF EXECUTOR OR ADMINISTRATOR

Accounting by executor, trustee

75 An executor, who is also a trustee under the will, may be required to account for his trusteeship in the same manner as he may be required to account in respect of his executorship.

R.S.S. 1940, c.63, s.71; R.S.S. 1953, c.69, s.75.

Approval of accounts by judge binding in Court of Queen's Bench

76 Where an executor or administrator has filed in the proper surrogate court an account of his dealings with the estate and the judge has approved thereof, in whole or in part, if the executor or administrator is subsequently required to pass his accounts in the Court of Queen's Bench such approval, except so far as mistake or fraud is shown, shall be binding upon any person who was notified of the proceedings taken before the surrogate judge or who was present or represented thereat and upon every one claiming under any such person.

R.S.S. 1940, c.63, s.72; R.S.S. 1953, c.69, s.76.

Condition of bond

77 The oaths to be taken by executors and administrators and the bonds or other security to be given by administrators and letters probate and letters of administration shall require the executor and administrator to render a just and full account of his executorship or administration within two years after the grant.

R.S.S. 1940, c.63, s.73; R.S.S. 1953, c.69, s.77.

Distribution of assets

78(1) Subject to subsection (2), where an executor or administrator has caused to be published once a week for four successive weeks in the newspaper published nearest to the last domicile of the testator or intestate, or in any other newspaper or newspapers designated by the judge upon an *ex parte* application by the executor or administrator, a notice in such form as may be prescribed by the rules of court, such executor or administrator may, unless otherwise ordered, at the expiration of the time fixed in such notice, distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard only to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof, as the case may be, so distributed, to any person of whose claim such executor or administrator has not had notice at the time of distribution; but nothing in this Act shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

(2) In the case of an original grant of probate or administration where the estate does not exceed in value the sum of $1,000, and in the case of any probate, letters of administration, or other legal document purporting to be of the same nature, duly resealed in Saskatchewan, the judge may, by order which may be obtained *ex parte*, reduce the number of times such notice must be published or may dispense with publication of such notice.

R.S.S. 1940, c.63, s.74; 1943, c.11, s.4; 1944, c.18, s.4; R.S.S. 1953, c.69, s.78.

Verification of claims and valuation of securities

79(1) Every creditor or other person presenting or sending in a claim to an executor or administrator shall verify the same by a statutory declaration, and shall therein state whether he holds any security for his claim, or any part thereof, and shall give full particulars of the same; and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon, and the executor or administrator may either consent to the right of the creditor or person presenting the claim to rank for the claim, after deducting such valuation, or he may require from the person presenting the claim an assignment of the security at the specified value to be paid out of the estate when sufficient is realized therefrom, and in such case, the difference between the value at which the security is retained by the executor or administrator, and the just amount of the gross claim, shall be the amount for which the creditor or other person shall rank in respect of the estate.

(2) Where an assignment of security is required pursuant to subsection (1), the creditor or other person shall, upon payment to him of the specified value of the security together with interest to date of payment where the indebtedness bears interest, assign the security to the executor or administrator:

Provided that until such payment is made nothing contained herein shall curtail, abridge or otherwise prejudicially affect any of the rights or remedies of the creditor or other person in respect of the security in question.

(3) Where the executor or administrator is not prepared to accept an assignment of a security at the specified value placed thereon by a creditor or other person, the executor or administrator may release the security to the creditor or other person; and in such case the creditor or other person shall take and accept the security at the specified value and shall be entitled to rank in respect of the estate for the balance, if any, of his claim:

Provided that if within one year after a creditor or other person has valued his security, or within such further time as a judge may allow, the executor or administrator has neither required an assignment of nor released the security, the creditor or other person may by notice in writing require a release of same, and the executor or administrator shall thereupon release the security to him at the specified value; and in such case the creditor or other person shall be entitled to rank in respect of the estate for the balance, if any, of his claim.

(4) Where a creditor or other person holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor or other person shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the party primarily liable thereon, as being his security for the payment thereof; but, after the maturity of such liability and its non-payment, he shall be entitled to amend and revalue his claim.

(5) Where a creditor or other person presenting or sending in a claim to an executor or administrator, for which or for any part of which he holds security, fails to value such security, the judge may, on application by the executor or administrator, of which application three days' notice shall be given to the Claimant, order that, unless a specified value is placed upon the security, and notified in writing to the executor or administrator within a time to be limited by the order, such claimant shall, in respect of the claim, or the part thereof for which the security is held, be wholly barred of any right to share in the proceeds of the estate; and if a specified value is not placed on the security and notified in writing to the executor or administrator according to the exigency of such order, the said claim, or the said part, as the case may be, shall be wholly barred as against the estate.

R.S.S. 1940, c.63, s.75; R.S.S. 1953, c.69, s.79.

ANCILLARY PROBATES AND LETTERS OF ADMINISTRATION

Giving effect to ancillary probates

80(1) Where any probate, letters of administration or other legal document purporting to be of the same nature, granted by a court of competent jurisdiction in the United Kingdom or in any province or territory of Canada or in any other British province or in any of the states of the United States of America, is produced to and a copy thereof deposited with the clerk of the surrogate court of any judicial district in which the testator or intestate had property at the time of his death and the prescribed fees are paid as on a grant of probate or administration, the probate or letters of administration or other document shall, under the direction of the judge, be sealed with the seal of that court and shall thereupon be of the like force and effect in Saskatchewan as if it had been originally granted by that court; and shall, so far as regards this province, be subject to any orders of that court or on appeal therefrom as if the probate or letters of administration had been granted thereby.

(2) For the purposes of this section a duplicate of any probate or letters of administration or other legal document purporting to be of the same nature, or an exemplification thereof, sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, sha11 have the same effect as the original.

R.S.S. 1940, c.63, s.76; 1948, c.26, s.1; R.S.S. 1953, c.69, s.80.

Filing applications for resealing

81 On all applications for resealing, the affidavits and other papers required to be filed under the provisions of *The Succession Duty Act* shall be filed in the same manner as is required with respect to all other applications for probate or administration.

R.S.S. 1940, c.63, s.77; R.S.S. 1953, c.69, s.81.

Security required

82(1) The letters of administration shall not, except in the case of letters of administration granted to the public trustee appointed under the provisions of the *Public Trustee Act, 1906*, being chapter 55 of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland passed in the sixth year of His late Majesty King Edward VII, be sealed with the seal of the surrogate court until a certificate has been filed under the hand of the clerk of the court which issued the letters that security has been given in such court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such court as the assets within Saskatchewan, or in the absence of such certificate until like security is given to the judge of the surrogate court covering the assets in Saskatchewan as in the case of granting original letters of administration.

(2) Notwithstanding that a certificate has been filed under subsection (1), the judge of the surrogate court may, if he deems it expedient in any case, refuse to seal the letters of administration until security is given in a sum of sufficient amount to cover the assets within Saskatchewan.

R.S.S. 1940, c.63, s.78; R.S.S. 1953, c.69, s.82.

OFFICIAL ADMINISTRATORS

Appointment

83(1) In each judicial district or for such other portion of the province as may be deemed desirable the Lieutenant Governor in Council may appoint an official administrator.

(2) An official administrator shall be either a trust company which has obtained the approval of the Lieutenant Governor in Council under the provisions of *The Trust Companies Act* or a barrister of not less than three years' standing.

(3) When an official administrator dies, resigns or is removed from office or permanently removes from Saskatchewan or is appointed a judge, and any estate to which letters of administration have been granted to him as official administrator is not fully administered, the administration of such estate shall thereafter be carried on to completion by his successor in the office of official administrator without any further order or grant of the court, and all properties of every description, real, personal or mixed, belonging to the said estate shall, upon the appointment of the successor in office, vest in such successor all property capable of delivery and all documents, records, accounts, letters and papers whatever relating to the estate or connected with the administration thereof in the possession of the former official administrator or in the possession of some person in his behalf shall forthwith be handed over to the said successor in office.

(4) Where:

(a) letters of administration to an estate were granted to any person as official administrator and, prior to the twenty-second day of March, 1948, such person died, resigned or was removed from office as official administrator or had permanently removed from Saskatchewan or been appointed a judge;

(b) the estate had not been fully administered on the said date; and

(c) the administration of the estate has not been completed pursuant to the provision enacted by section 3 of chapter 31 of the statutes of 1947;

the administration of the estate shall be carried on to completion by the official administrator without any further order or grant of the court, and for that purpose all properties of every description, real, personal or mixed, belonging to the estate shall remain vested in the official administrator.

(5) From and after a vesting of the properties of an estate pursuant to the provisions of subsection (3) or (4):

1 the name of the official administrator in whom the properties are so vested shall, without any registration whatever, be deemed to be substituted for the name of the former official administrator in all documents and instruments of whatever nature or kind, relating to or in connection with the estate to which the properties belong, In which the name of the former administrator appears;

2 subsections (3) and (4) shall be and shall in all respects be treated, for the purposes of every land titles office, registry office and other public office whatever in the Province of Saskatchewan, and of any and all transactions therein and of the officers administering the same, as a legal and valid transfer to the official administrator of any and all lands or interests in lands and any and all mortgages, charges, encumbrances or other documents whatever and of any and all other property of every description, real, personal or mixed, belonging to such estate and standing in the name of or vested in the former administrator;

3 it shall not be necessary to register or file or issue this Act or any further or other instrument, document or certificate or to make any entry showing the transfer and vesting of any such property, or in the case of lands under *The Land Titles Act*, to have certificates of title issued in, or to have any mortgage, charge, encumbrance or other document whatsoever transmitted to, the name of the official administrator, nor shall it be necessary in any instrument or document whereby the official administrator deals with any of the said property to recite or set out such transfer and vesting or to pay any fees in connection with the transfer and vesting of any of such property pursuant to subsection (3) or (4).

(6) When the administration of an estate becomes the duty of an official administrator pursuant to subsection (3) or (4) and the accounts in the estate have not been passed immediately prior to the vesting of the estate in the official administrator, the official adminstrator shall, forthwith after such vesting, make application to the judge of the surrogate court by which the letters of administration were issued to pass the accounts in the said estate and the official administrator who formerly had the administration of the estate or some person in his behalf shall be made a party to the said application and shall be entitled to claim therein proper compensation and reimbursement for his conduct of the administration, the said compensation and reimbursement to be paid by the official administrator out of the proceeds of the estate.

(7) The Lieutenant Governor in Council may make regulations for the better carrying out of the provisions of subsections (3), (4), (5) and (6), or any of them, and for supplying any deficiency therein.

R.S.S. 1940, c.63, s.79; 1947, c.31, s.3; R.S.S. 1953, c.69, s.83.

Duty as to neglected property of deceased persons

84 When any person dies, whether testate or intestate, of and his lands, personal estate and effects have not been taken possession of by his executors or next of kin, the official administrator of the judicial district where the property or any of the property is situated is hereby empowered, and it shall be his duty when the facts are brought to his notice, to take possession of the said lands, personal estate and effects forthwith and the same to safely keep, preserve and protect, and pending the grant of probate to an executor or the issue of letters of administration, as the case may be, the official administrator shall have all the powers of an executor or administrator.

R.S.S. 1940, c.63, s.80; R.S.S. 1953, c.69, s.84.

Official administrator described as such on letters

85 Every official administrator taking out letters of administration to any estate as such, shall be so described therein and shall be deemed to be acting as an official administrator thereunder.

R.S.S. 1940, c.63, s.81; R.S.S. 1953, c.69, s.85.

Issue of letters of administration to official administrator

86(1) In the absence of an application for probate of a will or for letters of administration within one month after the decease of any person leaving property, letters of administration to the lands, personal estate and effects of the deceased may be granted to the official administrator:

Provided that such letters of administration may, at any time after the grant thereof, be revoked in the discretion of the judge upon the application of any executor applying for probate of will or of the husband or wife or any next of kin or domiciliary executor or administrator of the deceased applying for letters of administration.

(2) After such administration the official administrator shall in all cases file in the court an account thereof properly audited and certified as correct by an auditor acting under the authority of the Provincial Auditor.

(3) Excepting in the administration of estates which do not exceed in value the sum of $200 the official administrator may, at any time after the expiration of eighteen months from the date of the grant of the letters of administration, be required by any person interested in the estate either as beneficiary or creditor to pass his accounts before the judge.

(4) No remuneration shall be allowed to an official administrator in any estate unless and until the accounts thereof have been first audited and certified to date by the auditor and the amount of the remuneration to be allowed has been certified by him according to the tariff to be fixed by the Lieutenant Governor in Council.

(5) Upon application by an official administrator or any person interested in the estate, the judge may in his discretion increase or reduce the amount of the remuneration to be allowed as certified by the auditor. Such application may be made *ex parte* or upon such notice as the judge may direct.

(6) The official administrator shall pay to the Provincial Treasurer for the audit of his accounts such fees as may be determined by the Lieutenant Governor in Council, and may be allowed the same on passing his accounts as expenses necessarily incurred on behalf of the estate.

R.S.S. 1940, c.63, s.82; 1944, c.18, s.5; R.S.S. 1953, c.69, s.86.

Security by official administrator

87(1) Each official administrator shall furnish security to the satisfaction of the Lieutenant Governor in Council in the penal sum of $15,000 in respect of each judicial district for which he is appointed official administrator, conditioned for the due performance of his duties; but shall not otherwise be required to furnish security as administrator unless the judge specially so directs.

(2) Any person interested may, by leave of the Attorney General, institute proceedings in his own name on the security furnished by an official administrator without any assignment thereof; and, in case an official administrator is directed by a judge to furnish other security, any person interested may by leave of the court or judge institute proceedings thereon without any assignment thereof.

R.S.S. 1940, c.63, s.83; R.S.S. 1953, c.69, s.87.

Official administrator required to apply for letters of administration

88 After the expiry of one month from the death of any person leaving property, any person interested in the estate may by written notice require the official administrator, if he has not already done so, to apply for letters of administration, and it shall then be the duty of the official administrator to make such application; provided that the person making such requisition shall, if the official administrator so desires, make such deposit with him as the judge deems sufficient to cover his costs, charges and expenses.

R.S.S. 1940, c.63, s.84; R.S.S. 1953, c.69, s.88.

Intestacy where estate under $200

89(1) Upon the proper official administrator filing with the clerk of the surrogate court of the judicial district within which a deceased person had his last known place of abode an affidavit that as far as can be ascertained such deceased person has not left a will or testamentary disposition and that his estate does not exceed in value the sum of $200, then, subject to any order made under section 18, such official administrator shall, at the expiration of sixty days after the decease of such person or within that time if the judge so orders, unless some other person has applied for the grant to him of letters of administration or letters testamentary and such grant has been made, be the administrator of such estate to all intents and purposes as if letters of administration or letters testamentary had formally issued to him, and the formal grant of probate or administration to him shall not be necessary. Upon request the clerk shall give to the official administrator a certificate as to the filing of the affidavit and the effect thereof. Such certificate shall state the date of the death of the deceased.

(2) Unless he has obtained an order dispensing with publication of a notice to creditors, which order may be obtained *ex parte*, an official administrator who becomes the administrator of an estate under this section shall advertise for claims once in a newspaper published weekly or semi-weekly at or near the last place of residence of the deceased, and, after the expiration of two months from said advertisement, he shall proceed to distribute the estate having regard only to the claims of which he has notice.

(3) If the deceased was holder of a share or shares in a company which is in liquidation and the liquidator has been appointed official administrator for any judicial district in the province, the liquidator shall be a proper official administrator for the purposes of this section, notwithstanding that he has not been appointed for the judicial district in which the deceased had his last known place of abode.

(4) If the deceased shareholder's last known place of abode is outside the province, the liquidator may, on complying with the provisions of subsection (1), administer his estate in the judicial district in which the head office of the company, or its head office for Saskatchewan, is situated.

(5) After such administration the official administrator shall file in the court an account thereof verified on oath.

R.S.S. 1940, c.6;), s.85; 1942, c.12, s.5; 1943, c.11, s.5; 1946, c.18, s.3; R.S.S. 1953, c.69, s.89.

Yearly statement of emoluments

90 During the month of January in each year each official administrator shall furnish to the Lieutenant Governor in Council a statement in detail, verified on oath, of the emoluments of his office for the preceding year ending the thirty-first day of December.

R.S.S. 1940, c.63, s.86; R.S.S. 1953, c.69, s.90.

FEES AND COSTS

Fees to officers

91 The clerks and officers of the surrogate courts and barristers and solicitors practising therein shall be entitled to take for the performance of duties and services under this Act such fees as may be fixed under the provisions hereinafter contained.

R.S.S. 191!0, c.63, s.87; R.S.S. 1953, c.69, s.91.

Lieutenant Governor in Council to prescribe fees

92 The Lieutenant Governor in Council may prescribe the fees and charges payable to clerks and other officers of the court.

R.S.S. 1940, c.63, s.88; R.S.S. 1953, c.69, s.92.

Judge's Order for remuneration of executor or administrator

93(1) The judge of any surrogate court may grant to the executor or trustee or administrator acting under a will or letters of administration a fair and reasonable allowance for his care, pains and trouble and his time expended in and about the executorship, trusteeship or administration of the estate and effects vested in him under the will or letters of administration and in administering, disposing of and arranging and settling the same and generally in arranging and settling the affairs of the estate, and may make an order or orders from time to time therefor and the same shall be allowed to an executor, trustee or administrator on passing his accounts.

(2) Where application is made for an order dispensing with the passing of accounts the judge may by the same order grant an allowance under subsection (1).

(3) Nothing in this section shall apply to any case in which the allowance is fixed by the instruments creating the trust.

R.S.S. 1940, c.63, s.89; 1942, c.12, s.6; R.S.S. 1953, c.69, s.93.

Procedure and practice

94 The rules now in force as to procedure and practice in the surrogate courts, and in relation to matters testamentary and letters of administration to the effects of deceased persons, are hereby continued until altered under the authority of this Act; and no other fees than those specified in the said rules shall be taken or recovered by barristers and solicitors.

R.S.S. 1940, c.63, s.90; R.S.S. 1953, c.69, s.94.

Taxation of costs

95(1) The bill of any barrister or solicitor for any fees, charges or disbursements in respect of business transacted in a surrogate court, whether contentious or not, or any matter connected therewith shall, as well between solicitor and client as between party and party, be subject to taxation in such surrogate court.

(2) The mode in which the bill shall be referred for taxation and the person by whom the costs of taxation shall be paid shall be regulated by rules of court made under this Act; and the certificate of the clerk of the amount at which the bill is taxed shall be subject to appeal to the judge of the court.

R.S.S. 1940, c.63, s.91; R.S.S. 1953, c.69, s.95.

BOARD OF SURROGATE JUDGES

Appointment and powers

96(1) There shall be a board of surrogate judges consisting of a chairman and two members appointed by the Lieutenant Governor in Council from the judges of the surrogate court.

(2) The board of surrogate judges may prescribe a tariff of the fees and costs to be allowed to solicitors and counsel practising therein for duties and services in respect of proceedings in such courts, and to witnesses and interpreters therein.

(3) The board may also make rules for regulating the practice and procedure in the surrogate court and may repeal, alter or amend any rule or tariff of costs.

(4) Any such rule or tariff shall be published in *The Saskatchewan Gazette* and shall come into force on a subsequent date to be stated therein. This subsection shall not apply to a general consolidation and revision of the rules but a notice of the promulgation of the consolidated and revised rules shall be published in the *Gazette* and shall state a date subsequent to such publication on which the rules shall come into force.

R.S.S. 1940, c.63, s.92; R.S.S. 1953, c.69, s.96.

SALARY OF JUDGE

Salary

97 There shall be paid out of the consolidated fund of the province to each of the judges of the surrogate courts hereby established, whether presiding over one or more of such courts, a salary of $1,500 per annum.

R.S.S. 1940, c.63, s.93; R.S.S. 1953, c.69, s.97.

SCHEDULE

FORM A

(Section 39 (1))

Affidavit of Execution of Will by Subscribing Witness

In the Surrogate Court of the Judicial District of _____

In the estate of _____, deceased.

I, (*name, residence and occupation of deponent*), make oath and say:

1 That I knew (*name of deceased*) late of (*residence and occupation of deceased*).

2 That on or about the _____ day of _____, 19_____, I was personally present and did see the paper writing now produced and shown to me and marked as exhibit "A" to this my affidavit, signed by the said (*name of deceased*), as the same now appears, as and for h_____ last will and testament, and that the same was so signed by the said (*name of deceased*) in the presence of me and of (*name of other subscribing witness*) of (*state residence and occupation*), who were both present at the same time; whereupon the said (*name of other subscribing witness*) and I did, in the presence of the said (*name of deceased*) and in the presence of each other, attest and subscribe the said will.

(*If the deceased was a marksman, i.e., executed the will by making his or her mark, paragraph 2 of the affidavit shall be as follows:*)

2 That on or about the _____ day of _____, 19_____, I was personally present and did see the paper writing now produced and shown to me and marked as exhibit "A" to this my affidavit, signed by the said (*name of deceased*) by making h_____ mark thereto, as the same now appears, as and for his last will and testament, and that the same was so signed by the said (*name of deceased*) in the presence of me and of (*name of other subscribing witness*) of (*state residence and occupation*) who were both present at the same time; whereupon the said (*name of other subscribing witness*) and I did in the presence of the said (*name of deceased*) and in the presence of each other attest and subscribe the said will.

(*If the deceased was a marksman or blind add:*)

3 That previously to the execution of the said will over to h_____ by me (*or by* _____, *as the case may be,* in my presence) and the testator at such time had a knowledge of its contents and appeared perfectly to understand the same.

Sworn before me at the _____
of _____ in the _____
of _____ this _____
day of _____, 19_____.
_____

_____
Signature

FORM B

(Section 39 (1))

Affidavit of Plight and Condition

In the Surrogate Court of the Judicial District of _____

In the estate of _____, deceased.

I, (*name, residence and occupation of deponent*), make oath and say:

1 I am an executor (*or as the case may be*) named in the paper writing now produced and shown to me and marked as exhibit "A" to this my affidavit, purporting to be and contain the last will and testament of (*name of deceased*) late of (*residence of deceased*), deceased, which said will bears date the _____ day of _____, 19_____, begins thus "_____" ends thus "_____" and is subscribed thus "_____".

2 I have viewed and perused the said will and particularly observed that (*here refer to the alterations, erasures and interlineations, if any, in the will, its general plight and condition and any other matter requiring to be accounted for; also, recite the finding of the will and, if possible, clearly trace it from the possession of the deceased in his or her lifetime up to the time of making the affidavit*) and the said will is now in all respects in the same state, plight and condition as when executed by the testator (*or as the case may be*).

Sworn before me at the _____
of _____ in the _____
of _____ this _____
day of _____, 19_____.

_____

_____
Signature

(*If the deponent cannot verify the condition of the will at the time of execution and no deponent can be found to do so, then state such facts and circumstances as will tend to show that the will in fact the act of the testator.*)

Regina, Saskatchewan
Printed by the authority of
THE QUEEN'S PRINTER