

ORDERS IN CHANCERY, 9TH OCTOBER, 1840.

Whereas by an Act of the General Assembly, made and passed in the third year of the Reign of Her present Majesty Queen Victoria, entitled "An Act in amendment of the Law relating to Wills, Legacies, Executors and Administrators, and for the settlement and distribution of the Estates of Intestates," it is among other things enacted, that the Court of Chancery shall and may from time to time make, establish, alter and amend rules and forms of practice and proceedings, as well for that Court in matters made cognizable before it by this Act, as for the Surrogate Courts, in such manner as the Court of Chancery shall see fit, provided that such rules and forms be in no wise repugnant to that Act.

His Excellency the Chancellor, by and with the advice and consent of His Honor the Master of the Rolls, doth hereby order and direct as follows:

1. That every Petition for Letters Testamentary or of Administration, shall state the name of the Widow (if any) and of all the children (if any) of the deceased, and their additions and places of residence respectively, and in case there shall be no children, then the names and additions of all the nearest of kin in equal degree, and their representatives, with their several places of residence, and in case any of the persons whose names are required to be stated are married women or infants, the names and additions of the husbands or guardians of such infants (if any) shall also be stated with their places of residence, provided that in case any of the above particulars are sworn to be unknown to the Petitioner, and the Surrogate to whom the Petition shall be presented, shall deem it unnecessary under the circumstances of the case, that the same should be stated, such particulars may be omitted.

2. That the Surrogates in the several Counties shall fix the time and place of holding their Courts as the business of the Courts may require, and shall be attended at the times appointed by the Registers of Probates, who shall enter in a Book the Minutes of proceedings at such Courts.

3. That the allegations and proceedings in such Courts shall be oral, except in cases where the importance of the matters in question, or other circumstance shall appear to the Surrogate to render a more formal mode of procedure necessary, when they may, to such extent and subject to such limitations and regulations as the Surrogate may prescribe, be required to be in writing.

4. That the witnesses shall be openly examined before the Surrogate, and the opposing party be allowed to cross-examine without any written interrogatories on either side.

5. That when any matter is contested before the Surrogate his decision thereupon shall be openly pronounced in the presence of the parties or on due notice given, and the same shall be entered in the Minutes and a copy furnished to the party requiring the same at his expense.

6. That upon filing an appeal with the Register of Probates, the appellant do forthwith give notice thereof to the opposite party by serving him with such notice in writing, or in such other way as the Court of Chancery may direct.

7. That upon the transmission of the copy of an appeal from the decision of any Surrogate to the Court of Chancery, on application of the appellant and proof of due notice of such appeal having been given, the said Court shall make an order for the hearing of such appeal on a day to be thereupon appointed, which order shall be duly served on the opposite party fourteen days (or such longer time as the Court of Chancery may direct,) before the day so appointed.

8. That upon the day appointed for the hearing on proof of the service of the order, the appeal shall stand to be heard, unless the Court of Chancery, on special cause shown, shall think fit to postpone the same, and in that case, on the day to which the hearing shall be postponed.

9. That in case the appellant shall not within six weeks after the transmission of the copy of the appeal obtain an appointment of a day for hearing the same and serve the same as aforesaid, the Court of Chancery may, in its discretion, on the application of any other party interested, by an order of the said Court, appointed a day for hearing the same, which said order shall be served on the said appellant such time before the day appointed as the Court shall direct, and in case the said appellant shall make default in appearing and bringing on the cause to be heard on the day appointed, the said Court on proof of due service of such order may direct such appeal to stand dismissed.

10. That the following forms be used in matters relating to the said Surrogate Courts with such alterations and additions as the case may render necessary or the Surrogate in particular circumstances may permit or prescribe.

J. HARVEY, Chancellor.
N. PARKER, M. R.

No. 1.

Petition for Letters Testamentary.

To A. B. Esquire, Surrogate Judge of Probates for the County of C. and Province of New Brunswick.

The Petition of D. E. of H. in the said County, Yeoman,
Humbly Sheweth,

That G. H. late of the Parish of F. in the County aforesaid, Yeoman, departed this life on or about the day of last past at the Parish of F. aforesaid, having first duly made and executed his last Will and Testament in due form of Law, bearing date the day of , in the year of our Lord and thereby appointed your Petitioner the sole Executor thereof. That immediately before the time of his death the said G. H. was an inhabitant of the said County of C. and that he died, seized or otherwise entitled unto Real Estate of the value of £ , situate within the said County [or as the case may be] and personal Estate to the value of £ .

Your Petitioner therefore humbly prays that he may be admitted to prove the said last Will and Testament, and that Letters Testamentary may be granted thereof to him in due form of Law, and as in duty bound will ever pray.

Dated the day of A. D. .
(Signed) D. E.

No. 2.

Petition for Letters of Administration.

To A. B. Esquire, Surrogate Judge of Probates for the County of C. in the Province of New Brunswick,

The Petition of D. E. of the Parish of F. in the said County of C. Esquire,
Humbly Sheweth,

That G. H. late of the Parish of F. aforesaid, departed this life on the day of in the year of our Lord at the Parish of F. aforesaid, without having, to the best of the knowledge and belief of Your Petitioner, made any Will. That the said G. H. immediately before his death was an inhabitant of the said County of C. and that he died, seized or otherwise entitled unto Real Estate of the value of £ , situate in the said County, (or as the case may be) and personal Estate of the value of £ that the said G. H. left a Widow L. H. and sons, namely, Your Petitioner the eldest, and (here insert the names and additions of the other sons) and daughters, namely, (insert their names and additions) him surviving, which said Widow and children all reside at in the said County.

Your Petitioner prays that Letters of Administration of the Estate and effects of the said G. H. may be granted to him in due form of Law, and as in duty bound will ever pray. Dated the day of A. D. .
(Signed) D. E.

No. 3.

Oath to be administered to Petitioner for Letters Testamentary or of Administration.

You do swear that the contents of this Petition by you subscribed, are true to the best of your knowledge and belief,—So Help you God.

No. 4.

Memorandum of Jurat.

Sworn before me by the above named D. E. the day of A. D. .
(Signed) A. B. Surrogate.

No. 5.

Form of Renunciation by person entitled to Administration.

To A. B. Esquire, Surrogate Judge of Probates for the County of C.

Whereas G. H. late of F. in the County aforesaid, departed this life intestate, (or having made his last Will and Testament, bearing date the day of A. D. .)

I, J. H. the Widow and relict of the said G. H. (or as the case may be) do hereby renounce all right and title to Administration on the said Estate. As witness my hand hereto subscribed this day of A. D. .
(Signed) J. H.

No. 6.

Affidavit in proof thereof.

A. B. of the Parish of F. in the County of C. maketh oath and saith, that he is well acquainted with J. H. of the same place, Widow and relict of the late G. H. and he is also well acquainted with her hand writing from having seen her write; and this deponent further saith, that he believes the signature "J. H." subscribed to the annexed certificate of renunciation to be of the proper hand writing of the said J. H. Sworn the day of A. D. before me.

S. T. Surrogate.

No. 7.

Form of Bond to Surrogate on granting Letters of Administration.

(See Appendix to Act 3d Vic. C. 61. No. 1.)

No. 8.

Form of Bond to Surrogate by Executor.

(See Note to Appendix, No. 1.)

No. 9.

Letters Testamentary.

Surrogate Court,

County of , Province of New Brunswick.
By His Excellency Lieutenant Governor and Commander in Chief of the Province of New Brunswick, &c. &c. &c.

To all to whom these presents shall come or may concern, Greeting:

Know Ye, that at F. in the County of C. on the day of , in the year of our Lord , before A. B. Esquire, being thereunto delegated and appointed the last Will and Testament of G. H. late of , in the County aforesaid, deceased, (a copy whereof is hereunto annexed) was proved and is now approved and allowed of by me, the said deceased having while he lived, and at the time of his death, goods, chattels and credits within this Province, by means whereof the proving of the said Will, and the granting of Administration of all and singular the said goods, chattels and credits, and also the auditing, allowing and finally discharging of the account thereof unto me only doth belong: And that the Administration of all and singular, the goods, chattels and credits of the said deceased and any way concerning his said Will, is granted unto , in the said Will named, having been already duly sworn to the faithful discharge of the duties of the trust thereby in him reposed.

In testimony whereof, I have caused the Seal of the said Surrogate Court to be hereunto affixed the day of , in the year of our Lord one thousand eight hundred and , and in the year of the Reign of our Sovereign Lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c. &c. &c.

No. 10.

Oath to be administered to Witnesses on proof of Will made before 1st January, 1839, in Common Form.

You, C. D. and E. F. do severally swear that you did see G. H. named in the instrument hereunto annexed, sign the same [and that he at the same time published and declared the same to be his last Will and Testament,] and that at the time of such signing [publishing and declaring,] you the said C. D. and E. F. [and also one J. K. whose name is likewise subscribed to the said instrument as a Witness attesting the execution thereof,] were all present, and that the said G. H. appeared to you at

the time to be of sound and disposing mind and understanding, and that the names C. D. and E. F. [and J. K.] were subscribed to the said instrument by you the said C. D. and E. F. [and the said J. K.] respectively, in the presence of each other and of the said G. H.

No. 11.

Indorsement on Will of Oath having been Administered.

Province of New Brunswick,
County of C.

Be it remembered, that on the day of before me A. B. Esquire, Surrogate for the County of C. personally appeared C. D. and E. F. whose names are subscribed as attesting Witnesses to the instrument hereunto annexed, purporting to be the Will of G. H. late of the Parish of F. in the County of C. deceased, and being duly sworn did (each for himself) depose and say that they did see the said G. H. sign the said instrument, [and that he at the same time published and declared the same to be his last Will and Testament] and, at the time of such signing [publishing and declaring,] they the said C. D. and E. F. [and one J. K. whose name is also subscribed to the said Will as a Witness attesting the execution thereof,] were all present, and that the said G. H. appeared to them, the said C. D. and E. F. respectively, to be of sound and disposing mind and understanding, and that the names "C. D." and "E. F." [and "J. K."] were subscribed to the said Will by them the said C. D. E. F. [and J. K.] respectively, in the presence of each other and of the said G. H.

(Signed) A. B. Surrogate of the County of C.

No. 12.

Oath to be Administered to Executors.

You do swear that you believe this paper to be the last Will and Testament of G. H. late of F. in the County of C. deceased, and that you will pay all the debts and legacies of the said deceased as far as the assets shall extend and the Law shall bind you, and that you will in other respects to the best of your ability, faithfully discharge the duties of an Executor of the said last Will and Testament,—So Help you God.

No. 13.

Indorsement on Will of Executor having been duly Sworn.

Province of New Brunswick,
County of C.

Be it remembered, that on the day of A. D. before me A. B. Surrogate for the County of C. personally appeared L. M. sole Executor named in the within written Will of G. H. late of the Parish of F. in the County of C. deceased, hereunto annexed, and was duly sworn to the authenticity of the said Will, and to the faithful discharge of the duties of the trust thereby in him reposed by taking the Oath of an Executor as by Law required.

No. 14.

Oath to be Administered to Witnesses on proof of Will made after 31st December, 1838.

The same as Form No. 10, omitting only the words between brackets, and substituting the word "both" for "all."

No. 15.

Indorsement on will made after 31st December, 1838, of oath (No. 14 being administered.)

(Similar to Form No. 11, omitting words between brackets.)

No. 16.

Caveat.

A. B. of F. in the County of C. a Creditor (or legatee or otherwise as the case may be) of G. H. late of the same place deceased, hereby enters his Caveat against the granting of Letters Testamentary on the Will of the said G. H. to C. D. therein named as Executor thereof, on the ground that (here the ground of objection is to be stated.) Dated the day of A. D. (Signed) A. B.

No. 17.

Letters of Administration.

Surrogate Court,
County of C. Province of New Brunswick.

By His Excellency Lieutenant Governor and Commander in Chief of the Province of New Brunswick, &c. &c. &c.

To T. S. of the Parish of F. in the County of C. Greeting: Whereas G. H. of F. in the County of C. lately died intestate, as it is said, having whilst he lived, and at the time of his death, Goods, Chattels and Credits, within this Province, by means whereof the granting of Administration of all and singular the said Goods, Chattels and Credits, and also the auditing, allowing and finally discharging of the account thereof unto me only doth belong; in order therefore, that the said Goods, Chattels and Credits of the said deceased, may be well and faithfully Administered, applied and disposed of according to Law, I do by these presents grant unto you the said T. S. (in whose fidelity I do confide,) full power and authority to administer and faithfully dispose of all and singular the said Goods, Chattels and Credits of the said deceased, and to ask, demand, recover, and receive whatever Goods, Chattels, debts or credits to the said deceased, while living, and at the time of his death, did in any way belong, and to pay whatever debts the said deceased at the time of his death did owe or was chargeable with, so far as such Goods, Chattels and Credits will thereunto extend, and the Law charge you, you having been already sworn well and faithfully to execute the duties of the trust in you hereby reposed, as by Law required. And I do by these presents make, ordain, and depute you Administrator of all and singular the Goods and Chattels, Rights and Credits of the deceased.

In testimony whereof I have caused the seal of the said Surrogate Court to be hereunto affixed, the day of in the year of the Reign of our Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of our Lord .

No. 18.

Oath to be administered to Administrator.

You do swear that you believe that G. H. late of F. in the County of C. died intestate

and that you will well and truly administer all and singular the Goods of the deceased, and pay his debts so far as his Goods or other assets which may come to your hands for that purpose shall extend, and that you will make a true and perfect Inventory of his Estate, real and personal, and render a just and true account of your Administration into the Surrogate Court for the County of C. as by Law required,—So help you God.

No. 19.

Warrant of Appraisement.

See form, Appendix to 3 Vict. C. 61, No. 4, and see Memorandum of oath administered thereon, 36.

No. 20.

Oath administered thereon.

You do severally swear that you will truly and impartially appraise the real and personal Estate of G. H. late of F. in the County of C. deceased, which may be exhibited to you according to the best of your knowledge and ability,—So help you God.

No. 21.

Inventory.

The following is an Inventory of all the real Estate, Goods, Chattels and Credits of G. H. late of F. in the County of C. deceased.

REAL ESTATE.

Lot of Land containing acres in the Parish of in the County of , with a house, barn and appurtenances thereon, (&c. &c.) valued at £ (&c. &c.)

PERSONAL ESTATE.

STOCK.

— Horses valued at £
— Cows " " (&c. &c.)
— Sheep " " (&c. &c.)

HOUSEHOLD FURNITURE.

— Tables, £
— Chairs, (£&c. &c.)

DEBTS.

Bond and Mortgage from C. D. to the deceased, dated, Penalty of Bond, £
Conditioned to pay £ and Interest. Paid thereon day of A. D. £
Judgment against E. F. at the suit of the deceased, in Court, Signed day of A. D. for £ (doubtful.)
Promissory Note made by R. S. payable to J. K. and indorsed to the deceased for £ (desperate.)

BOOK DEBTS.

R. L. £
G. S. (doubtful.)
M. N. (desperate.)

MONEY.

In Specie, £
Bank Note.
(Signed) A. B. Executor or Administrator.

No. 22.

Petition to sell real Estate for payment of debts.

To His Excellency Lieutenant Governor and Commander in Chief of the Province of New Brunswick, Chancellor of the same, &c. &c. or, To His Honor the Master of the Rolls.

The Petition of J. W. Executor of the last will and testament of G. H. late of F. in the County of C. deceased, (or Administrator of all and singular, the Goods, Chattels and Credits of G. H. late of F. in the County of C. deceased, who died intestate) humbly sheweth:

That the personal Estate of the said deceased, which has come to the hands of your Petitioner, amounted to the sum of £ that the debts of the Estate so far as they can be ascertained amounts to £ and that your Petitioner hath fully administered all the said personal Estate, as appears by the account thereof, herewith annexed, which said account contains a true statement of all the receipts and payments of your Petitioner on account of the said Estate, that the real Estate of the deceased consists of the following lots, pieces or parcels of Land, that is to say, [here describe the several lots, pieces or parcels of Land or premises, with the value of each separately, stating whether the same are occupied or not respectively, and if occupied, the names of the occupants so far as they have come the Petitioner's knowledge] that the heirs of the said deceased are A. B. of , in the County of C. C. D. of , &c. and the devisees of the said deceased are J. K. of , in the County of C. L. M. (of , &c.)

Your Petitioner therefore humbly prays that licence may be granted to him to sell such parts of the real Estate of the said deceased, as to Your Excellency (or Honor) may seem meet and necessary for the payments of his debts; and as in duty bound will ever pray.

(Signed) J. W.

day of A. D.
The within named, J. W. was duly sworn to the truth of the contents of the within Petition, the day of A. D. , before me.

A. B. Surrogate, County of C.

(Note.—A certified copy of the Inventory on file, and (in case deceased died testate) a copy of the will is to be annexed to the Petition, also, a copy of the Administrators or Executors account current with the Estate.)

[When the Petition is to the Surrogate for licence to sell, a similar form with the necessary alterations may be used.]

No. 23.

Licence to sell the real Estate by Court of Chancery.

NEW BRUNSWICK—IN CHANCERY.

day of A. D.

Whereas J. W. Executor of the last will and testament of G. H. late of F. in the County of C. , deceased, hath by his Petition, bearing date the day of last, represented that the personal Estate of the deceased, which has come to his hands, is deficient for the payment of the debts owing by the said Estate, and hath prayed that licence may be granted to him to sell such part of the real Estate as may be deemed meet and necessary for that purpose.

And whereas, (due notice having been given to the parties interested) on examination into

the matter of the said Petition it has been made to appear to the satisfaction of this Court, that the personal Estate of the deceased which has come to the hands of the Petitioner is not sufficient for the payments of the debts, but that a further sum of £ , over and above the amount of the said personal Estate, will be required for that purpose. And whereas it is deemed necessary that the whole of the real Estate of the said deceased should be sold for that purpose, it is hereby ordered, that the said Petitioner have licence, and he is hereby empowered and authorised to make sale of the real Estate of the said deceased, for the purpose of paying his debts, the said Petitioner proceeding therein in all things according to Law.

By the Court,
J. V. Registrar.

[In case a part only of the real Estate is intended to be sold, or any particular lot or parcel of Land, is designated for that purpose, the licence will be varied accordingly.]

The licence to lease will contain similar recitals and may be framed in the same manner with the necessary alterations.

No. 24.

NOTICE OF SALE.

To be sold by Public Auction on the day of at of the clock , at the house of , in the Parish of in the County of (or as the case may be) for payment of the debts of the late G. H. of F. in the County of C. deceased, in consequence of a deficiency of the personal Estate of the deceased for that purpose, pursuant to a licence obtained from the Court of Chancery, the Lands and Premises following, that is to say, [describe particularly the Lands and Premises.]
(Signed) J. W. Executor.

No. 25.

Bond to be given by Executor on sale of real Estate [see Appendix to Act 3 Vict. Cap. 61, No. 3.]

No. 26.

Appeal from decision of Surrogate, respecting sale of real Estate.

To His Excellency Lieutenant Governor and Commander in Chief of the Province of New Brunswick, Chancellor of the same, &c. &c.

The humble Petition and appeal of R. J. of F. in the County of C. one of the heirs of G. H. late of the same place , deceased, intestate, sheweth:

That A. B. of the Parish of F. in the County of C. aforesaid, Administrator of all and singular, the Goods, Chattels and Credits of the said G. H. did on the day of last, present a petition to , Esquire, Surrogate of the County of C. for licence to sell the real Estate of the said G. H. for the payment of his debts on the alleged ground of the insufficiency of the personal Estate for that purpose, a copy of which said Petition is hereunto annexed; that the said application was resisted by your Petitioner, who filed a Caveat with the said Surrogate against granting such licence, a copy of which is likewise annexed. That notwithstanding the objection of your Petitioner, the said Surrogate decided that licence to sell the real Estate, should be granted to the said A. B. Administrator, as aforesaid. And your Petitioner humbly represents to Your Excellency that the circumstances of the case are not such as to warrant the sale of the real Estate for the purpose aforesaid.

Your Petitioner therefore humbly appeals to Your Excellency, from the decision of the said Surrogate; and as in duty bound will ever pray.

CO-PARTNERSHIP NOTICE.

THE Subscribers in returning their sincere thanks to their friends and the public for the encouragement and support afforded them since their commencement in business, beg to inform them that they have entered into Co-partnership with Mr. JOHN WALLACE, of Glasgow, and will continue business under the style of

Munro, Wallace & Co.

and hope by punctuality and attention, with the advantage of having their Goods well selected in the British Markets, and offered here at moderate prices, to merit a share of confidence and patronage.

Fail GOODS hourly expected.

G. & J. MUNRO.

Fredericton, 1st October, 1840.

AUCTION.

TO be sold by Public Auction, on the Premises, on SATURDAY, the 31st day of October, instant, at 12 o'clock, P. M. that valuable Property situate on the North side of the Great Road, leading from Fredericton to Saint Andrews, distant one mile from the Town Plat of Fredericton, at present in the occupation of the Hon. WILLIAM B. KINNEAR.

The above Property occupies upwards of 18 acres of Land in a high state of improvement, and well watered, a comfortable Stone House with Frost Proof Cellars, and commodious Barns, Stables and Out-Houses.

Terms—One half the purchase money down, and the balance in three months, on approved indorsed paper.

A Plan of the Property may be seen at the Office of GEORGE LEE, JR. Esquire, Barrister at Law.

Fredericton, October 5, 1840.

Paints, Oil, Glass Nails, &c.

THE Subscribers have on hand a supply of No. 1 London Lead of superior quality, Black, Red, Blue, Green and Spanish Brown Paints, by the keg or a smaller quantity; boiled and raw Paint Oil, Spirits Turpentine, Putty and Whiting; board, shingle and lathing Nails; 12 x 10, 10 x 8, and 9 x 7 window Glass.

Also,—A few Franklin Stoves,