

EXECUTORS AND ADMINISTRATORS.

In *Ontario* and *Nova Scotia*, in proceedings by or against the representatives of a deceased party, the law does not permit the survivors (or their wives) on either side, if parties to the suit, to give evidence on the trial or inquiry, on their own behalf; but such survivor, &c., may be made a witness by the representatives of the deceased, on behalf of the deceased.

In *New Brunswick* there is no such restriction on the Law of Evidence.

In *Nova Scotia*, legatees may sue the Executor at Common Law for legacies. Residuary Legatees being Co-Executors, may also sue each other at Common Law for their rateable parts, and Executors may also be removed on application to the Supreme Court, and other Executors or Trustees may be appointed in the place of those removed by the Court, or any two Judges thereof.

No such statutory power exists in *Ontario* or *New Brunswick*.

In *Ontario* there is a provision, that in case of the death of one joint contractor, proceedings may be had against the representative of deceased, as if the contract had been joint and several, notwithstanding the other contractor may be still living, and action be pending against him. (Cap. 78, sec. 6.)

In *New Brunswick* and *Nova Scotia* there are no provisions to this effect.

In *New Brunswick*, Executors or Administrators, Plaintiffs or Defendants, may bring their actions or be prosecuted within six months after death—if party dies before limitation of time—or within thirty days thereafter, if cause of action survives. (1 Vol. Rev. Stat. 141.) And in the same Province under the provisions of the Act relating to the Administration of Justice in Equity, (2d Vol. Rev. Stat. 84, sec. 31.) a summary power is given to a Judge on an application on the Equity side, by a creditor, next of kin, or person interested in a Will, after cause heard on summons and affidavits, to make an order in his discretion for the administration of the estate, real or personal, when the whole estate has been by devise vested in a trustee for sale, and for receipt of rents and produce—which order is to have the force of a decree.

In *Ontario* and *Nova Scotia* these provisions are not found.

The powers as to distresses for rent, and bringing actions for injuries to real or personal property by or to the deceased in his lifetime, with the limitations within which such proceedings must be taken, are similar.

In *Nova Scotia*, by the amending statutes of 1865, chap. 7, an excellent provision is made for a Trustee, Executor, or Administrator, to obtain the opinion or advice of a Judge in Equity, respecting the management or administration of the trust property, or the assets of any testator or intestate, a proceeding which may sometimes save a good deal of wasteful litigation, and render unnecessary the injudicious interposition of personal legislation by parliament in matters of a private nature.

Sec. 7.—By sec. 7, it is enacted, "Any Trustee, Executor, or Administrator shall be at liberty, without the institution of a suit, to apply by petition to the Judge in Equity, for the opinion, advice, or direction of such Judge on any question respecting the management or administration of the trust property, or the assets of any testator or intestate; such application to be served upon, or the hearing thereof to be attended by all persons interested in such application, or such of them as the said Judge shall think expedient. And it shall be in the power of the said Judge to direct any question arising on any such applications to be argued before him, and to appoint counsel for that purpose, if he shall think it necessary to do so. And he is also empowered to refer questions arising on such applications to the consideration and judgment of himself, with two Judges of the Supreme Court associated with him, or the Bench of the Supreme Court, and to direct the argument to be had before the said Associated or full Court. The Trustee, Executor, or Administrator acting upon the opinion, advice, or direction given by the said Judge in Equity, or Associated Court, or Supreme Court, shall be deemed, so far as regards his own responsibility, to have discharged his