The Making of a Will and Laws Pertaining Thereto

and the Descent of Property in the Provinces of the Dominion of Canada

A Will is a written instrument left by a person in which he gives directions for the disposal of his property after his death. A person to make a valid will must be of the age of twenty-one years (except in Newfoundland), of sound mind and free from constraint or any undue influence.

In Newfoundland a person seventeen years of age may make a valid will.

Married women may dispose of their own estates by will as freely as though not married, except in a couple of the Provinces, where the husband's consent is still imagined to be essential. "Old wrongs die hard."

The lawyer's toast, "Here's to the man who writes his own will," should not be forgotten by laymen. Not everyone is fit to write a will; some lawyers are not fit. A will should not be the last act of a man's life. No wonder that so many of them are broken in the courts—dictated under intense excitement and drawn in haste, they do not represent the deliberate judgment of the testator, nor meet the requirements of natural justice.

Soldiers in service and sailors at sea may dispose of their effects by simply signing a written statement of how they wish their personal property to be disposed of. But soldiers in barracks are not included in this special provision.

A person can only leave *one* valid will, but may leave several codicils to it, hence every will and codicil should be dated. If two or more wills were left by the testator and neither one dated, neither one would have any effect and there would be an intestacy. If all were dated, then the one bearing the latest date must be accepted, unless the heirs could unanimously agree to accept and probate one of earlier date in preference.

In the interpretation of Wills regard will always be had to the circumstances existing at the time the will is made, and to the evident intention of the testator. If there is any discrepancy between the various clauses of the Will, what was written last will hold over the first written.

A father is not compelled to leave any portion of his property to the children, but in Ontario and the other Provinces which give the wife a right of dower, he cannot deprive her of her life interest in one-third his real property.

Dower in Quebec is either conventional or customary. Customary dower consists in the usufruct for the wife, and the ownership for the children, of one half of the immoveables which belong to the husband at the time of the marriage, and of one half of those which accrue to him during marriage from his ascendants.

Changing of Wills.—Alterations made in a will before its signing would not affect its validity, but to take effect as part of the will they must be initialed on the margin of the will by both the testator and the witnesses as evidence that they were made before the will was signed; or they might be referred to in a separate memorandum in another part of the will.

A person living several years after making a will, if circumstances require many alterations, it is better to make a new will and burn the old one, instead of making a codicil.

A will is revoked by the testator afterwards marrying, unless the will states that it was made in anticipation of marriage; or where the husband or wife elects by instrument in writing to take under the will; or where it is made in the exercise of a power of appointment, and the property would not in the absence of such appointment pass to the testator's heir, executor, or next of kin.*

*This section does not apply to Quebec.