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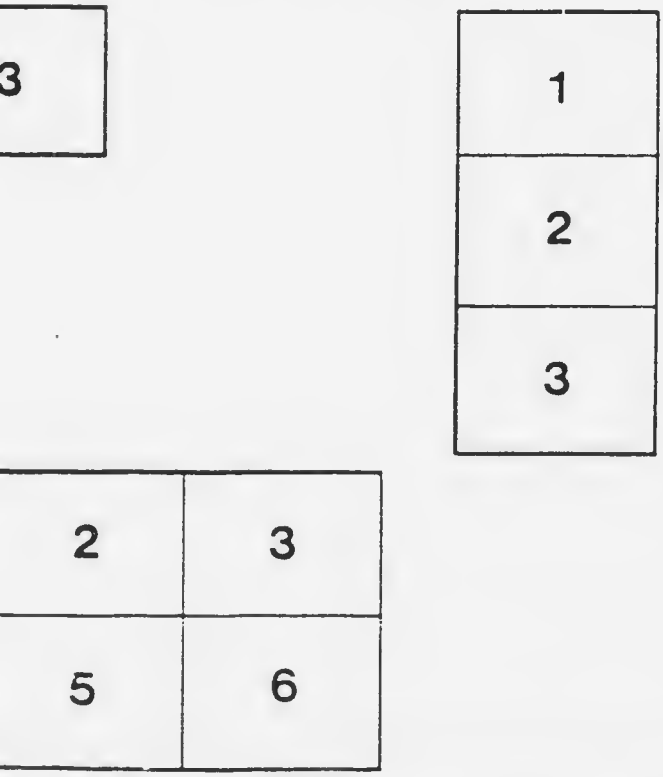

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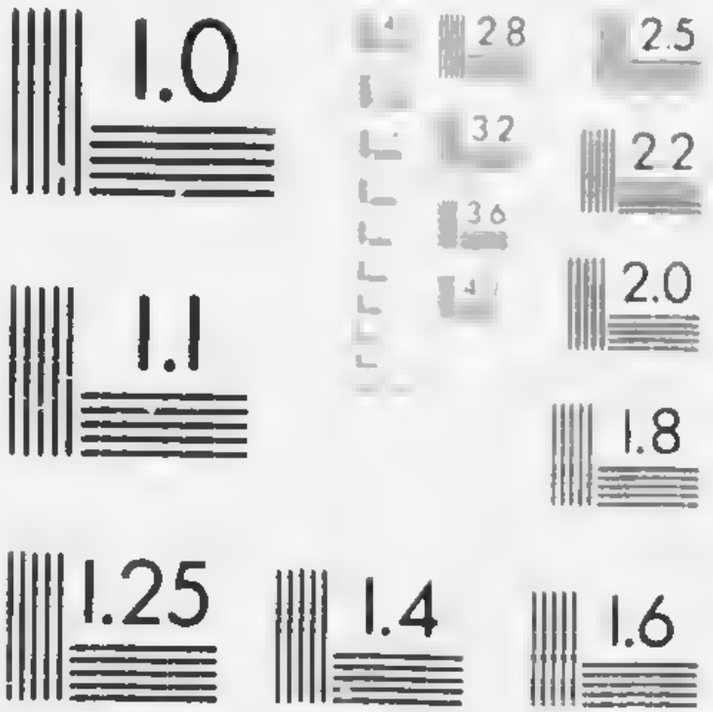

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The Making of a Will and Laws Pertaining Thereto

Explaining the Drawing of a Legal Will, the Probating Duties of Executors

and

the Fees Charged as Succession Duties

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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.

Wills in Quebec cannot be revoked by the testator except:—

1. By subsequent will.

2. By notarial or other written act by which a change of intention is expressly stated.

3. By destruction, tearing or erasure of the will, with intent to revoke it.

4. By his alienation of the thing bequeathed.

Revocation may be demanded:

1. On the ground of the complicity of the legatee in the death of the testator, or by reason of grievous injury done to his memory, or if the legatee hindered the revocation of the will by the testator.

Codicil.—When only a few minor changes might be desired to be made in a will, sometimes, instead of making a new will, it is as well simply to make a codicil to the will. Such a codicil should set forth clearly:

1 That it is a codicil, and describe accurately the Will that it belongs to.

2. It should be signed and witnessed the same as a will, but using the word "codicil" in place where "will" is used.

3. If it gives a legacy to one who already had a bequest, it should state whether this is a second bequest or merely a confirmation of the one already given.

4. If advances had been made during lifetime to a child on account of legacy, such fact should be noted in the codicil.

5. If there has been a change in the property either by the acquisition of more, or the disposal of any part of the former, the codicil should regulate the bequests accordingly.

Preventing Litigation.—Sometimes in making a will the testator adds a clause that in the event of any person commencing proceedings to break the will, such person shall not receive any portion whatever, even though they had been mentioned in the will to receive a legacy, such proviso would hold good unless the suit to set aside the will succeeded.

Who may Draw a Will.—The testator may write his own will if he desires to do so, and every man should be able to write his will. None of the Provinces, except Quebec, place any restrictions as to who may write wills, but prudence would dictate that none but a person of experience and ability should be entrusted with so important a matter.

In Quebec there are three forms of wills:

1. The notarial will, called "authentic form," is made before two notaries, or one notary and two witnesses of the male sex and of full age. It need not be probated, but the notary grants authentic copies.

2. The English form, which any person can write, but must be signed in the presence of at least two witnesses of either sex. It must be probated.

3. The holograph will, which is one wholly written and signed by the testator. It needs no witness, but must be probated.

The holograph will is also held to be valid by the Statutes of Manitoba, Alberta and the North-West Territories.

Requisites of a Valid Will.—It should contain:

1. The name in full of the testator, his occupation and residence.

2. The plainest of language should be used and a separate paragraph for each bequest.

3. It should plainly state that this is his last will and testament.

4. That it revokes all former wills and testaments.

5. It should provide how debts and expenses are to be paid.

6. A clear and definite statement of how the property is to be divided, and full particulars of each bequest. Where all the property of the testator is left to one person it is not necessary to specify the property in detail.

7. It should give the Christian names in full of all the legatees, and if there are more than one person of the same name, the occupation and residence should be given, so a mistake would be impossible.

8. Executors should be appointed who have been previously consulted.

9. It should be properly dated, and the signature of testator witnessed by *at least two* persons. If only one witness signed, the will would be void, and there would be an intestacy, except in the case of a holograph will in the Provinces where they are recognized.

10. The testator should sign at the foot of the will in the presence of the two witnesses. If the testator is unable to write his name it may be signed by some other person for him, but in his presence or by his direction. Or he may sign by making his mark or having his hand guided while making his mark, providing he understands the meaning of what is being done and assents to it.

11. A devise or bequest to a wife should state clearly whether it is in lieu of dower or not in those Provinces where dower is allowed, or she may be entitled to claim both.

12. No seal is necessary to a will, though sometimes a seal is attached.

Two Subscribing Witnesses are essential to the validity of wills (except holograph wills.) The two witnesses must not only be both present together and see the testator sign the will, but they must sign it themselves as witnesses in the presence of each other, as well as in the presence of the testator.

The witnesses may be minors, except in Quebec, if old enough to understand what they are doing, and to give evidence in court, if necessary. An executor or a creditor could also be a witness.

If a legatee or devisee were to sign a will as witness, it would not invalidate the will, but the bequest to such person would be void. Also a bequest to the wife or husband of the person signing as witness to a will is void in all the Provinces.

The death or subsequent incapacity of either or both the witnesses before the death of the testator would not invalidate the will.

Witnesses should take notice of the mental and physical condition of the testator, so as to satisfy themselves that he understands what he is doing and is competent to make a will.

Holograph wills, that is those wholly written and signed by the testator himself, do not require witnesses.

In Quebec the clerks and servants of the notaries cannot be witnesses. The notaries must not be related to the testator in the direct line, or to each other, or in the degree of brothers, uncles or nephews. The witnesses may be related to the testator, or the notaries, or to each other. Legacies in favor of the notaries or witnesses, or to wife or husband of the notaries or witnesses or to any relation in the first degree are void.

Ministers of religion may be witnesses but cannot act as notaries and write Wills in Authentic Form, but may in the English form.

Wills in the English form may be written by any person and females may serve as witnesses the same as in the other provinces.

In Saskatchewan, if there are two other competent witnesses to a will besides a legatee or divisee, who may happen to sign as witnesses, then such devise or bequest shall not be void.

Residuary Clause.—Where there is a residuary clause in a will every lapsed legacy or bequest, and every other legacy which on any ground fails to take effect, will fall under the control of that clause and pass to the residuary legatee, also any property not disposed of by the will falls under the control of that clause.

When Wills Take Effect.—Wills do not take effect until after testator's death, and all gifts and legacies become "vested" at the same time, whatever the interest may be. If such person should die after the testator, but before obtaining possession of the bequest or legacy he could dispose of it by will, or if no will were left it would go to his heirs, and if such person were married the husband or wife would take same interest as though the property were actually in possession.

Shares or stocks specifically bequeathed to any person, the title in such stocks is vested at the time of the testator's death, and any dividend declared thereafter belongs to such legatee although such shares may not have been transferred into his name.

Probating Wills.—After the decease of the testator, as soon as convenient or becoming, the will should be read in the presence of the parties interested, and then proved in the Surrogate Court. But there is no statute compelling such reading of the will, and except in Quebec and Prince Edward Island it is not compulsory to probate the will.

In cases where parties claiming to have the will refuse to either read it in presence of those interested or to probate it, any of the heirs or next-of-kin may apply to the court either for letters of administration of the estate, or for an order compelling the production of the will. The Surrogate Court has jurisdiction in such matters, and a subpoena issued by the court to such party would produce the will in court.

Executors may perform the duties imposed upon them by the will without probating it, except in Prince Edward Island and Quebec, but in large estates it is better to probate them, as that secures an authoritative declaration from the Surrogate Court that the will is valid. It also clothes the executor with the legal authority to administer the affairs of the estate and enter the courts, if necessary.

In Prince Edward Island the will must be probated within thirty days after death of the testator.

For Quebec, see Section "Who May Draw a Will."

Wills bequeathing real estate should be registered as well as probated, so that the titles of the devises may be more easily traced. The will, of course, carries the title to the property without registering, but by registering the title is completed in the Registry Office and also guards against inconvenience from a possible loss of the will. They must be probated first before they can be registered. With lands under the Torrens System registration is essential.

Probating and registering wills furnish evidence of their validity, but neither one can prevent an action from being taken to cancel them.

The probate fees can be ascertained by inquiry at the Surrogate Office in the county in which the will would be proved. The tariff of fees is not fixed, as circumstances in different cases differ. A solicitor who would be engaged to fill out the papers is allowed about $12, if the estate does not exceed $1,000.

A legatee is the one who receives property under the will. Devisee is used when the bequest is in land.

A legacy to a friend or relative other than a child who dies before the testator lapses unless the will provides otherwise.

A legacy to the testator's child, who dies before the testator, will go to the children of such legatee, *i.e.*, to the grandchildren.

A legacy to a witness or to the wife or husband of a witness is void.

A devise to widow in bar of dower has priority over other legacies.

Legacies not paid at maturity can be sued for the same as any other debt, and interest collected one year after the testator's death, as the executor is allowed one year in which to distribute the estate.

Bequests to the Wife.—The will should state definitely whether the bequests to the wife are in addition to dower or in lieu of dower.

If real property is bequeathed to her, it should be clearly stated whether it is in fee simple or only a life estate.

If she is left a cash annuity it should be made a charge upon the land.

If she is to retain her home at the homestead, a certain portion of the house should be reserved for her exclusive use.

If she is to have a horse, or cow, or poultry, etc., it should be stated how the food for the same is to be provided, and in the event that any of them should die, the will should settle how the loss is to be made good; also what buildings are reserved for them during winter and pasturage during summer.

If the farm is to be worked by the son or other near relative, and a share to be given the wife for her support, the will should clearly state the conditions of the lease, and the relative proportion of meadows and crops, the wife's share in each, her share of garden vegetables, fruit, grapes, etc.; or the wife should be left free to make her own terms through the executor.

It must be remembered that a will is not a lease, but it may be made to operate as a lease, and, if carelessly drawn, the door for future friction is left wide open. It may also tie the hands of the executor.

Executor, or Executrix if a Woman, is the person named in the will as the one who is to carry out its provisions, and look after the property until its distribution among the heirs is accomplished.

A minor could be appointed, but he would not be allowed to enter upon his office until he was twenty-one years of age, and during that time the estate would be administered by the minor's guardian, or by one appointed by the Surrogate Court.

An executor may be a legatee, or a creditor, or a debtor. It was formerly the rule if a debtor were appointed executor his debt was forgiven, but that is no longer the case.

An executor may enter at once upon the work of carrying out the provisions of the will, as soon as it has been publicly read, before being proved, except in Quebec and Prince Edward Island. For the other Provinces, where there is no money in a bank to be drawn out, and no debts requiring them to enter the courts to collect, it is only a waste of money to probate an ordinary will.

An executor may be appointed guardian as well, and if not so appointed by the will and there are minor children who have no guardian he may apply to the Surrogate Court to be appointed guardian. In cases where minor children would be left with both parents dead, the testator should appoint an executor a guardian as well to such infants, thus saving the cost of appointment by the court.

An executor appointed by will dying, his executor may continue to administer the estate; but if the deceased executor had been appointed by the Surrogate Court, then another executor would have to be appointed to take his place, either by the Surrogate, or High Court.

Executors who cannot agree as to the management of the estate, either one or all may apply to the court for instruction. The court may then either direct what shall be done or may itself assume the administration of the estate, in which case the executors are freed from future liability. In all cases where executors need advice they may apply to the court.

Executors cannot act by proxy except in merely clerical work, neither can they employ solicitors to do what they should do themselves, and charge the cost against the estate.

In Quebec a married woman cannot act as executrix without consent of the husband or judicial authority.

In New Brunswick an executor who does not file an inventory with the registrar within three months may be served with a notice in writing by any interested person to file such inventory within ten days, and if not filed within ten days from receipt of such notice, application may be made to the judge to demand inventory. If no such inventory is filed and no person applies to the judge for its filing, the judge, after thirty days from the time when the inventory should be returned, may on his own motion make an order for the return of such inventory.

It is strongly recommended to make a Trust Company Executor of a will, they have the experience, and are reliable, and responsible for all their acts; an individual may die, the Trust Company will go on.

Executor's Notice to Creditors.—The following form of notice executors may use in a local newspaper or the official *Gazette*:

Re estate of....., deceased.

Notice is hereby given, pursuant to Chapter 129, Section 38, R.S.O. (or similar for other provinces), that all persons having claims against the estate of ....., late of the Township of ....., County of..... (yeoman, or as the case may be), who died on or about the.....of.....19 ., are required to deliver their claims and full particulars of such claims to....., of the town of....., Executor, on or before the .....day of....., 19... And after the said..... day of....., 19..., I will distribute the assets of the said deceased among the parties entitled thereto, having regard only to the claims of which I shall have received notice. A. B., *Executor.*

After the due publication of the above notice the executors may, after the expiration of the time stated in the notice, proceed to pay those who have delivered their claims, and then distribute the balance among the beneficiaries.

If debts should afterwards appear, be sued for, and recovered, each one shall refund and pay back to the executor or administrator his rateable part of the debt and costs.

Powers and Liabilities of Executors and Administrators.—They represent the deceased in settling the affairs of the estate, and distributing the proceeds among the beneficiaries according to instructions in the will, but if no will then according to statute.

They may pay debts or claims upon any evidence that they deem sufficient, may compromise or submit to arbitration any debt or claim as they think best, may give and execute such agreements, releases, etc., as they deem expedient without becoming responsible for any loss occasioned thereby, unless forbidden by the instrument appointing them.

They may complete whatever contracts the deceased was bound to complete if he had not died.

They may maintain an action for all torts or injuries to the person or estate of the deceased, except in cases of libel and slander, that have not been barred by statute. Third parties may also bring action against the executors or administrator for torts or injuries, as well as debt that they could have brought against the deceased if he had not died.

An executor of a deceased executor may draw deceased executor's trust funds from a bank.

The statutes allow an executor or administrator to withdraw money deposited in a bank in the name of the deceased testator.

Executor may mortgage an estate for necessary improvements, but not to himself. He could subsequently buy the mortgage and have it assigned to him, and hold it as security for the principal money and interest.

In Nova Scotia, chapter 27, 1910, provides that the conditions in such mortgage must have the approval of the Court endorsed on it.

Executors may provide for the education of the minor children and pay necessary expenses out of the estate.

They may also erect a suitable monument to deceased according to his station in life, and pay for the same out of the estate.

Executors of a deceased member of a partnership firm do not become partners, and cannot interfere with the partnership business. The deceased partner's interest must be ascertained and paid over by the surviving partners, and if this cannot be done satisfactorily to the executors, the executors may enter action for the partnership business to be wound-up and the assets converted into cash and divided as per partnership agreement.

Discharge of Executors.—An executor, who is believed by the heirs to be acting unwisely or unjustly, may be compelled to show his books before the County Judge by any of the heirs who is twenty-one years of age.

An executor that is found to be wasting the estate or committing acts of injustice against the heirs, may be removed by proceedings in the Surrogate Court. A guardian may also be required to produce and pass his accounts in connection with the property of infants under his control.

Also, where an executor, or one having a life estate in property, becomes insane the heirs or any person interested in the estate as "reversionist" may apply to the court for an order for the administration of the estate and the court will take the property out of the hands of the executor or such tenant for life.

Remuneration of Executors.—The expenses of executors are a charge upon the estate, and they are entitled to an equitable percentage of the proceeds of estate or trust funds to recompense them for their time and labor. There is no fixed tariff of fees for executors, but if the beneficiaries object to the amount charged, the executors should put in an itemized bill of their expenses and the percentage they deem they are entitled to, usually five per cent., before the Judge of the Surrogate Court, who, in passing the accounts, has power to either increase or diminish the amount charged as seems to him to be equitable in each particular case.

In Quebec Executors are not entitled to any fee unless otherwise directed by the will appointing them.

Executors' Release.—When an estate has been distributed among the beneficiaries, debts of deceased of which the executors have had notice been paid, and their own remuneration been received, it is not necessary to present an itemized statement of the dealings with the estate to a Judge and receive a discharge. The following form of release, giving the name and address of each person receiving a bequest or a distributive share of the estate signed by them with a witness to their signature, as shown below, is a legal discharge of the executors from future personal liabilities therewith, and does not take from the estate the heavy court fees that the other method involves:

Know all Men by these Presents that we, A. B., of the .....County of.....(occupation); C. D., of the .....County of .....(spinster, married woman, or as case may be); E. F., of the .....County of....., etc., hereby acknowledge that we have received from ....., executors of the estate and effects of....., late of said (place), in the County of....., deceased, the sum hereinafter set opposite our signatures in full satisfaction and payment of all sum or sums of money due to us, the children (grandchildren, if any) of the said....., deceased, as our distributive shares of the said estate of ....., deceased.

And we therefore do by these presents remiss, release, quit claim and forever discharge the aforesaid executors, their heirs and administrators of and from any claim for said distributive shares.

In witness whereof we have hereunto set our hands and seals this.....day of.....19...

Signed, Sealed and Delivered in the presence of :

	Signature	Seal	Amount
As to signature of..... A.B.	A.X.	★	$
As to signature of..... B.C.	X.Y.	★	$
As to signature of..... C.D.	R.A.	★	$

It would add to the appearance if the above form would be written on a typewriter, as it would be if prepared in a law office, but the names of recipients of the witness must be in the handwriting of the persons themselves.

Intestacy is where a person dies without leaving a will. In such case if property is left, unless the heirs can agree among themselves as to the division of the property, it must be distributed according to the Statutes of the

Province in which the property is situate. Also if the intestate left debts due him that could not be collected without suit, an administrator would have to be appointed in order to sue. And if the intestate left money in a bank, an administrator would have to be appointed in order to draw it out, unless he left a signed cheque covering the amount, or a signed cheque in blank, or gave a power of attorney to someone to draw the money from the bank.

Administrator is the one appointed by the Surrogate Court or Court of Probate to settle the affairs of the estate of a person who dies without leaving a will, or neglects to name an executor in his will, or names one who refuses to act.

In Newfoundland the Supreme Court and in Yukon the Territorial Court grants letters of administration and probate.

The regulations in each of the Provinces concerning the settlement of estates vary considerably, as also do the succession duties; hence, it is advisable for a person acting as an executor or administrator to either consult a lawyer or take full instructions from the office where wills are probated.

But a person dying intestate and leaving real and personal property, it is not legally compulsory for any of the heirs to take out letters of administration. If the heirs can all agree as to the distribution of the property among themselves, they can draw up an agreement to that effect, which, being signed by all, and sealed, will bind all to abide by it. And if land is to be sold the widow and heirs all joining in the deed give a good title. Providing all are of full age.

An administrator's duties are exactly the same as those of an executor, so are his liabilities. An administrator must, however, give a bond for the due performance of his trust, while an executor usually need not do so.

In case a will is made, but no executor appointed in it, the administrator must carry out its provisions the same as an executor would do.

As soon as an administrator is duly appointed he will take possession of the property and divide it according to the Statutes, or Will, if there is a will. A child, husband, wife, or any other person who may chance to be in possession, has no more authority over the property than others, unless they have a valid lease, in which case they may hold it until the lease expires, unless sooner terminated by mutual consent.

Where an intestate dies leaving property and there are no known heirs, a creditor (if any) may apply for letters of administration. The Attorney-General is the proper person to take charge of such estates, who will attempt to discover heirs.

In cases where no will is found, or persons claiming to have the will and refuse to read it, any of the heirs or next of kin may apply to the Surrogate Court for letters of administration, and to secure an order for the production of any supposed will and to examine witnesses therewith.

In Ontario an amendment of 1909, chap. 32, provides that letters of administration shall not be granted to any person not a resident of Ontario.

Distributing the Estate.—Executors must remember that legatees are not required to demand payment, but it is the executors' duty to pay the legacies to the rightful persons. Moneys due legatees who cannot be found must either be retained, or safely invested, or paid into court in order to free themselves from personal liability.

Executors must also remember that they are to pay the legacies and the debts of the testator only. If the same person were executor for both husband and wife he must not mix the money of the two estates; for debts, funeral expenses, and legacies of each must be paid out of the proper estate.

Personal property of the deceased is the proper fund out of which debts are to be paid and not out of real estate. If that is not sufficient then any other property that has not been "specially bequeathed" to any person should be resorted to, then after that the property "specially bequeathed" is available.

Money from an insurance policy is payable according to its terms, and does not become part of the estate unless it has been included in the will. If not mentioned in the will the executors have nothing to do with it. Whether mentioned in the will or not, it is free from all claims of creditors if payable to wife or children or other preferred beneficiaries.

In the matter of insurance, however, if the money is made payable to the wife, who dies before the testator, then in that case the money will fall into and become part of the estate.

Where a will is made and any portion of the property of deceased was not disposed of in the will, it falls to the heirs as though no will had been made, and the executors must divide it among them according to law and without regard to the bequests in the will, unless there is a residuary clause, in which case it would fall under that clause.

Property bequeathed in trust to executors to pay over the income to a certain person for a term of years or for life is a separate trust, and must be kept separate from the rest of the estate, and must not be used for payment of debts, except in the event that there is not sufficient other property.

Where there is a deficiency of assets to pay debts it shall be distributed *pro rata*, without preference, among them all. A debt due an executor has no preference over others, neither has a judgment.

Property in another province or country must be managed according to the laws of that province or country, no matter where the testator lived. Where there is doubt as to certain legacies to whom to pay, the executors may pay the money into court and in that way free themselves from liability.

In the matter of dower, in a case where the wife has been absent and unheard of for seven years, the law *presumes* that she is dead, so that after that length of time the executors are protected from personal liability in paying the whole estate over to the heirs. Giles *v.* Morrow, 1 O.R., 527.

Those who may assert that the absent one is alive after that length of time must be prepared to prove it. Wing *v.* Angrave, 8 H.L., Cases 183.

Executors are to endeavor to collect in all debts within a reasonable time or they become personally liable for any loss that occurs, especially those debts standing out upon personal security. To allow a debt to outlaw would be deemed culpable neglect, and the executors would by law be required to make it good.

Executors must not pay a debt of the testator that has been barred by statute unless the will so directs.

Form of Will.—The following form of will covering various kinds of bequests may be found useful as a guide to those not accustomed to writing wills, and shews the method of filling in the Legal Will Form.

I, William Smith, of the City of Toronto, in the County of York, merchant, being of sound and disposing mind and memory, hereby make and publish this my last will and testament revoking all former wills made by me at any time heretofore.

1st. I hereby appoint my wife, Harriet Amelia, my son Clarence, and William King, all of the City of Toronto, in the County of York, to be executors of this my last will, directing the said executors to pay my just debts, funeral and testamentary expenses out of my estate as soon as convoniently may be after my decease.

2nd. After the payment of my said debts, funeral and testamentary expenses, I give, devise and bequeath all my real and personal estate which I may now or hereafter be possessed of or interested in, in the following manner; that is to say:

3rd. I give, devise and bequeath to my beloved wife, Harriet Amelie (in lieu of dower), without impeachment of waste, all that my freehold, with buildings and appurtenances thereto belonging, known as lot No. 6, in the second concession of the Township of Ancaster, County of Wentworth, and Province of Ontario, containing by admeasurement one hundred acres, be the same more or

less, for her sole use during her natural life, and upon her decease to my children and their heirs, respectively, share and share alike.

4th. I also devise and bequeath to my said wife all that freehold messuage or tenements in which I now reside, known as Lot No. 36 Howland Avenue, in the City of Toronto, with the garden, outbuildings and appurtenances thereto belonging, together with all my household furniture, plate, china, and chattels of every description being in and on the premises, for her own use absolutely; also I bequeath unto my said wife the sum of two thousand dollars now deposited in my name in the Traders' Bank, at Toronto.

5th. I give, devise and bequeath to my son, Harry Edmund, the farm known as the Walnut Grove Place, being Lot No. 8, in the first Concession of the Township of York, in the County of York, together with all the crops, stock and utensils which may be thereon at the time of my decease; and also the property in the City of Toronto, Ont., known as the Arlington Block, being Lot No. 18, on the north side of King Street, subject to a legacy of five hundred dollars to be paid to my nephew, John Alexander Smith, in two equal annual instalments of two hundred and fifty dollars each without interest, the first payment to become due and payable when he becomes twenty-one years of age, said legacy to be the first charge on the said property.

6th. I give and bequeath to my daughter Grace, wife of James D. Allan, fifty shares in the capital stock of the Provincial Natural Gas Company, which stand in my name on the books of said Company; also two thousand dollars in cash, payable out of my funds in the Traders' Bank.

7th. I give and bequeath my gold watch, with chain guard and appendage, to my brother, James Edwin, for his own use.

8th. I give and bequeath to my niece, Alice Matilda Krafft, as a specific legacy, my fifty shares, numbered 101 to 150, both inclusive, in the Toronto Street Railway Company.

9th. I give and bequeath to my nephew, John Alexander Smith, aforesaid, a legacy of five hundred dollars hereinbefore provided for. But in case my said nephew, John Alexander Smith, shall die under the age of twenty-one years, then I direct that the said $500 shall go to my sister Abigail Jane for her absolute use and benefit.

All the residue of my estate both personal and real not hereinbefore disposed of I give, devise and bequeath unto my son Clarence, his heirs and assigns forever.

In witness whereof I have hereunto set my hand and seal this tenth day of June, in the year of our Lord one thousand nine hundred and six.

Signed, Published and Declared by the said William Smith, the testator, as and for his *Last Will and Testament*, in the presence of us, both present together at the same time, and in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses to the due execution thereof.

WILLIAM SMITH ★

CHARLES SUMMERS.
F. W. WILLIAMS.

Some might prefer the following beginning for the will:

In the name of God. Amen.

I, ..., of the Township of ....., in the County of....., farmer (or, as the occupation may be), considering the uncertainty of human life and having property, both real and personal, do make, publish and declare this Instrument of Writing my last Will and Testament, in words following:

Referring to a life of three score years and ten, the stated life of man, and with it health, peace and a large portion of comfort and its attendant blessings, the Lord of all the earth hath permitted me to enjoy, I would here

render thanks to Almighty God, for His kind dealings and extended mercy to me, trusting and ever praying that the residue of my days may be an entire submission to His Divine will, and for the future, hoping and believing in salvation through the merits and mediation of Christ my Redeemer, the Saviour of the world; my worldly possessions I would also at this time arrange, and will and order as follows: 1st. I hereby appoint, etc.

If a Trust Company is to be appointed executors, paragraph No. 1 would read as follows:—

I hereby appoint **The Prudential Trust Company Limited** executors of this my last will, etc., etc.

Codicil Revoking Will.—I (insert name and profession) do hereby revoke an instrument bearing date (give date and witnesses), and purporting to be my last will and testament.

In witness whereof I have hereunder set my hand, this ..... day of ..... in the year of our Lord one thousand nine hundred and .....

Signed, published and declared by the said..... the testator, in the presence of us, etc. (same wording as in the will). } (Testator's name.)

Trustees and Trust Funds.—No technical words are needed for the creation of an express trust. A will that devises or grants real estate unto A in trust for B, or which directs A to sell such property and pay the proceeds to B, or to apply the proceeds for the benefit of B extending over a number of years creates a trust in favor of B, and places upon A the responsibility of a trustee if he accepts the trust.

The statutes of all the Provinces hold trustees rigidly to their obligations. The trustee, whether a trust company or an executor or other person, must carry out the instructions of the instrument appointing him.

He also has a discretionary power outside of such provisions in the administration of the trust. If he errs in judgment, the court may correct him, but if he acts in bad faith he will be held liable for any loss resulting therefrom.

They have power to compound and settle disputes, may accept such security for debts as to them, or a majority of the trustees or executors or administrators seem best, or give time for payment, and will not be responsible for loss if done in good faith.

They have power to administer the estate, receive incomes from it, make necessary repairs, but have no authority to make merely ornamental improvements, as that would be speculative.

All the Provinces and Newfoundland absolutely prohibit speculation with trust funds, and the desire to secure larger revenue from such funds in speculative projects is no palliation for the crime of gambling with other people's money.

The Trustees' Act of each Province and Newfoundland enumerate various investments that are safe, and any trustee is unwise if he goes outside of those lists and thus incurs personal liability unless he knows absolutely that there can be no loss, or unless he is prepared to make good any loss that may occur.

Trustees or executors are authorized by statute to invest trust money in any stock, debentures or securities of the Dominion or Provincial Governments, and on first mortgage on land held in fee simple, providing such investments are reasonable and proper.

They may also invest in public securities of the United Kingdom or of the United States, and also in municipal bonds and debentures.

There are also various mortgage and other financial corporations in whose stocks and debentures trustees are permitted to invest trust funds, which should be ascertained by persons acting as trustee in any Province or in Newfoundland.

If a trustee improperly lend money on a mortgage security beyond the amount that would be reasonable he

is personally liable to make good the sum advanced in excess of what should have been loaned, and interest on the same.

A trustee or guardian who invests trust funds in his own name, or deposits such money in a bank in his own name without in some way designating his representative capacity, becomes personally liable if loss occurs. It is the same if they lend trust money on a promissory note made payable to themselves personally, if loss occurs they will be required to make it good. To free themselves they must in every case designate that it is trust money.

A trustee's powers may be suspended by a decree of a court granting an injunction, or a receiver for the estate, or placing the execution of the trust in the hands of the court.

A trustee may also, if he wishes to be discharged from the duties, apply to the court for relief.

The trustees are individually liable and accountable for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any bank or other person with whom trust funds may be deposited, or for any other loss unless the same shall happen through their own wilful neglect.

For comparatively large estates it is doubtless preferable to make one of the "Trust Corporations" the trustee. They are financially responsible, have wide experience and ample opportunities for safe investment, and charge no more than a private person is entitled to charge.

Laws of Descent of Real and Personal Property.—*Descent of Intestate Estates.*—In case the owner of property dies without leaving a valid will, the rule is, that the distribution of the personal estate is to be regulated by the law of the Province or country wherein he was a domiciled inhabitant at the time of his death without any regard to the place of birth or death, or the situation of the property at that time. The right of succession to the real property is regulated according to the law of the Province or country where the property is situate, and the administration of the estate must be there also.

The laws of inheritance are very similar in all Provinces, but where there are variations they will be specially mentioned in the following résumé:

If there are children from two husbands or two wives they share equally.

Children means immediate children of the deceased and does not include grandchildren.

A posthumous child, that is, one born after the death of the father, inherits equally with the others.

A posthumous child for whom no provision is made in a will takes a like share with the others as though there were no will made, and each of the others must abate enough to make up the amount.

Children of half blood share equally with children of whole blood.

Children of deceased children take their parents' share, but children of a deceased nephew or niece are excluded. No collaterals are admitted after brothers' and sisters' children, if there are nearer kin.

The persons who legally represent deceased children of an intestate are the *descendants*, not "next of kin," hence a son of an intestate dying before such intestate, and leaving a widow and child, the whole will go to the child and nothing to the widow. Prince *v.* Strange, 6 Madd. 162.

Illegitimate children, that is, those born before marriage, do not inherit from the father or mother either in Ontario.

An adopted child or a step-child does not share with children of deceased.

Second or third wife surviving her husband takes the same share that the first wife would have taken.

(*a*) *Where a husband dies leaving children* but no will, then one-third goes to the wife absolutely, and the remaining two-thirds go to the children in equal degree. If any of the children are dead their descendants take what would have come to them. Baker *v.* Stewart, 29 O.R. 388.

In Newfoundland and all the Provinces which allow dower, the wife is entitled to elect by an instrument in writing attested by at least one witness, whether she will take this distribution in all the property, subject to debts and funeral expenses, or her dower out of the real property.

In Quebec if there is community of property the surviving consort has the one-half absolutely, and also the enjoyment of the children's half until they are eighteen years of age, but must support and educate them, etc.

(*b*) *Where a husband dies leaving no children* and no will and no descendants of deceased children, then in Newfoundland, New Brunswick, Nova Scotia, and British Columbia, wife takes half and remainder goes to heirs of deceased husband.

In Manitoba, Alberta, Saskatchewan, and North-West Territories wife takes all.

In Ontario wife receives $1,000 out of the estate, and then one-half the remainder, the balance going to the natural heirs of deceased. If the estate, after paying expenses, does not exceed $1,000, the widow takes all.

In Newfoundland if a man dies leaving a widow, but no issue, if his estate after payment of the just debts, funeral and testamentary expenses does not exceed $2,000, it shall belong to his widow absolutely and exclusively, and if the net value of the estate exceeds $2,000 she shall share in the remainder the same as formerly in addition to the $2,000. If the estate exceeds $2,000 she has a charge against the whole estate for interest at 4 per cent. from the death of the husband until the $2,000 is paid. Chap. 4, 1908.

(*c*) *If a wife die leaving children* but no will, and having separate property in her own name, the husband takes a one-third interest in both the real and personal estate, the other two-thirds going to the children, except in New Brunswick, where if a wife die leaving children by a former husband, the surviving husband takes one-third and the other two-thirds go to the children of both husbands equally; but if there are children of the surviving husband only, then he takes one-half and the other goes to the children, and if no children the husband takes all the personal property.

In P. E. Island the whole goes to the husband for life, then to the children.

In Quebec, the surviving consort does not share in the succession, unless there are no relations within the heritable degree, that is, the 12th degree.

In Quebec the husband has the use of the property of the community coming to the children from the deceased until each child comes of 18 years of age or until he is emancipated.

(*d*) *If a wife die leaving no children* and no will, then in Ontario, Nova Scotia, New Brunswick, British Columbia and Newfoundland, the husband takes half and the remainder goes to the natural heirs of deceased. In Manitoba, Alberta, Saskatchewan, North-West Territories and P. E. Island the husband takes all.

In Quebec, when there is community of property only, the surviving consort takes the one-half absolutely, not as heir, but as undivided owner thereof.

(*e*) *A married person dying without a will* leaving children, but no surviving consort, the children take all the property, sharing equally. If there are children of deceased from two or more consorts they all share alike.

(*f*) *If an unmarried person, or one who has been married but leaves no issue or husband or wife, die* without leaving a will, in Ontario, the father, mother and surviving brothers and sisters share equally, children of deceased brothers or sisters taking their parents' share. If the parents are dead, then the brothers and sisters and children of deceased brothers and sisters take all; if there are no parents, or brothers, or sisters, then the grandparents, if living, get all; if there are no grandparents, then to uncles and aunts equally and to children of deceased uncles and aunts.

(*g*) *If there is no husband or wife* to share, then the whole of the estate of the deceased goes to the children of the deceased, and the descendants of deceased children to the remotest degree.

If there are no children, nor descendants of deceased children, then the estate goes to the "next of kin," according to the Statute of Distribution.

(*h*) *Where the deceased had issue but all predeceased him*, the estate will descend to the children of such issue (grandchildren) in equal proportions.

If any of those grandchildren died after the deceased grandparent, their children take the share which would have fallen to them if living.

(*i*) *If a husband die leaving a will*, then in those Provinces which do not allow dower, the wife as well as the children must take what is left in the will. But in those Provinces which allow dower, the wife may take what is left her under the will, or she may refuse that and demand her dower.

(*j*) *If a wife die leaving a will*, the husband may elect whether he will take under the will or to claim the right of tenant by the curtesy, except in Ontario, Manitoba, Alberta, Saskatchewan North-West Territories, and Quebec.

In Nova Scotia, New Brunswick and Prince Edward Island the whole amount would go to the father, if living; if no father, then to the mother, brothers and sisters equally, and to descendants of deceased brothers and sisters. If no parents, then to brothers or sisters and children of deceased brothers and sisters. If neither parents or brothers or sisters then to next of kin.

In Alberta, Saskatchewan and North-West Territories the father would be entitled to the whole estate, and if the father is dead, then the mother takes all. If the mother is also dead, the brothers and sisters and children of deceased brothers and sisters inherit.

In British Columbia, also, it would go to the father, unless the inheritance came to deceased from the mother, then it would go to her if living. If she were dead it would go to the father during life, and then revert to the heirs of the mother. If no father, mother, brother or sister, then to the brothers and sisters of the father; if none, or no descendants, then to the brothers and sisters of the mother, and their descendants.

In Manitoba the father, if living, would take the whole. If father is dead, then the mother, brothers and sisters share equally, children of deceased brothers and sisters taking parent's share.

In Quebec the succession would be divided into two equal portions; one half goes to the father and mother, who share it equally, the other half to the brothers and sisters and children of deceased brothers and sisters. If either father or mother is dead the survivor takes the whole half. If both parents are dead the brothers and sisters and children of deceased brothers and sisters take all.

If there are neither parents or brothers or sisters or children of deceased brothers and sisters, it goes to the ascendants equally between the paternal and maternal line. The ascendant nearest in degree takes the half that falls to his line to the exclusion of all others. If either line becomes extinct the relatives in the other line inherit the whole.

If the succession appears to be more onerous than profitable, the heirs may accept the same under *benefit of inventory*. This has the effect of limiting their liability for the debts of the succession to the amount received therefrom.

Succession Duties.—All the Provinces have a Succession Duties Act, by which the estate of persons dying wealthy shall return a reasonable percentage to the Provincial treasury, of which the following is a summary, giving the exemptions from duty, and the percentage taken on estates subject to duty:

I. IN ONTARIO, duties shall not apply to any property which, after deducting the just debts of the deceased, funeral expenses and Surrogate Court fees,

(a) Does not exceed $10,000; or,

(b) To property devised or bequeathed to religious, charitable, or educational purposes, to be carried on by a corporation or a person domiciled within the Province of Ontario; or,

(c) To property passing to parents, grand-parents, husband, wife, child, daughter-in-law, or son-in-law of

deceased, where the aggregate of property so passing does not exceed $50,000.

II. The scale of duty where the property passes to such near relatives as mentioned in previous sub-section and exceeds $50,000:

(a) Where it exceeds $50,000 and does not exceed $75,000, 1 per cent.

(b) Where it exceeds $75,000 but does not exceed $100,000, 2 per cent.

(c) Exceeding $100,000 but not exceeding $150,000, 3 per cent.

(d) Exceeding $150,000 but not exceeding $200,000, 4 per cent.

(e) $200,000, 5 per cent.

III. Where the aggregate amount of dutiable property exceeds $100,000 and passes to any one person of the relatives named above, a further duty shall be paid ranging from one per cent. on the amount exceeding $100,000 to three per cent. on $800,000 or over.

IV. Where the aggregate of dutiable property exceeds $10,000, so much of it as passes to any other lineal ancestor of deceased (except to grand-parents or to the father or mother), or to any brother or sister, or to an uncle or aunt of the deceased, or to a descendant of such uncle or aunt, shall be subject to a duty of $5 for every $100 of the value.

V. Where the value of the property exceeds $50,000 and passes to such persons as mentioned in previous sub-section, a further duty shall be paid as follows, ranging from one per cent. where it does not exceed $100,000 to five per cent. where it exceeds $450,000.

VI. Where the aggregate of dutiable property exceeds $10,000 and passes to any other relations than those previously named, or to any strangers in the blood to the deceased, except as previously provided for, a duty of $10 for every $100 of value shall be paid.

VII. Where the value of property passing to any one person does not exceed $200 it is exempt from duty.

Succession duties in Quebec. If the estate passing to husband or wife, or to the father or mother, or to father or mother-in-law, or to son or daughter-in-law, does not exceed $15,000, it is exempt. If it exceeds $15,000 then it is 1¼% on the excess up to $50,000, 1½% up to $75,000, 2% up to $100,000, 3% up to $150,000, 4% up to $200,000, and 5% if it exceeds $200,000.

When the whole amount passing to one such person exceeds $100,000 a further duty of 1% is added up to $200,00, 1½% up to $400,000, 2% up to $600,000, 2½% up to $800,000, and 3% if it exceeds $800,000.

If the property passes to brother or sister, or to nieces or nephews, if it is over $5,000, but not over $10,000, it is 5 per cent. If it exceeds $10,000 it is 5½ per cent.

If it passes to uncles or aunts or their descendants and does not exceed $10,000, it is 6 per cent., over $10,000 it is 6½ per cent.

If to brother or sister of grandparents or their descendants and does not exceed $10,000 it is 7 per cent., and if over $10,000 it is 7½ per cent. If to any other collateral it is 8 per cent. up to $10,000, and 9 per cent. if over $10,000. If to strangers it is 10 per cent.

When the amount of dutiable property exceeds $50,000 and passes to any one person in a collateral line or to strangers, the following further duties are imposed:

Exceeding $50,000, but under $100,000, 1 per cent.

Exceeding $100,000, but under $150,000, it is 2 per cent.

And thereafter adding ½ per cent. for each additional $50,000 up to $450,000, when it is 5 per cent.

Life insurance policies are dutiable the same as other property, unless they do not exceed $5,000.

Bequests for religious, charitable or educational purposes when carried on by a corporation or person domiciled within the Province not exceeding $1,000, in each case are exempt from duty. Chap. 11, 1906.

In New Brunswick the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $5,000, or the property bequeathed to religious, charitable or educational institutions, or to property passing to father, mother, husband,

wife, child, daughter-in-law, or son-in-law, which does not exceed $50,000.

Where it exceeds $50,000 and passes to near relatives named in preceding paragraph, the duty is 1½ per cent. up to $50,000, and 2½ per cent. on all over $50,000 up to $200,000, and 5 per cent. on all over $200,000.

Exceeding $10,000 and passing to grandparents and other lineal ascendants, except parents, 5 per cent.

Exceeding $5,000 and passing to other collaterals or to strangers, 10 per cent.

Legacies passing to any one person not exceeding $200 are exempt from duty.

In Nova Scotia the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $5,000, or to property passing to father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of deceased where the property value does not exceed $25,000.

In Prince Edward Island the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $3,000, nor to property passing to father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of deceased where the property does not exceed $10,000.

In British Columbia the Act does not apply to any estate not exceeding $5,000, nor to property passing to husband, wife, father, mother, child, grandchild, daughter-in-law, or son-in-law of the deceased which does not exceed $25,000.

Alberta, Saskatchewan and North-West Territories Succession Duties Act does not apply to any estate that does not exceed $5,000, nor to property passing to husband or wife, child, or grandchild, daughter-in-law, or son-in-law, or to parents where the estate does not exceed $25,000.

Property exceeding $25,000 and passing to persons named above, 1½ per cent. on all over $25,000 up to $100,000.

Exceeding $100,000, but not over $200,000, 2½ per cent. on all over $25,000.

Exceeding $200,000, 5 per cent. on all over $25,000.

Where it exceeds $5,000, and passes to grandparents or other lineal ancestors, or to uncles and aunts, 5 per cent. on all over $5,000.

When passing to other collaterals or to strangers, 10 per cent. on all over $5,000.

When the whole amount passing to any one person mentioned in the first paragraph does not exceed $5,000, or to any other one person and does not exceed $200, there is no duty.

◈ ◈ ◈

THE ADMINISTRATION OF AN ESTATE

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Prudential Trust Company, Limited

THE Prudential Trust Company, Limited, possesses a Dominion Charter, and, in addition, is licensed to transact business in the various Provinces of the Dominion. Its business is controlled by a Board of Directors, composed of prominent commercial and legal men, whose advice and experience enables the Company to administer Estates entrusted to them advantageously.

The Company has Branch Offices in Great Britain, and throughout Canada. It is prepared to assume the responsibilities authorized by its Charter in connection with the administration of Properties, and to act as Executor under Wills in any locality whatever. No Estate is too small to receive the Company's best attention. The fees for acting are fixed in the majority of cases by the Courts, in any case they are most reasonable. The Testator should have a clause in his Will to the following effect:—"The Trustee to retain out of my Estate and succession all advances made by it, all expenses incurred, and a reasonable fee for its own services."

All Trust monies are invested strictly in accordance with Statutory provisions. The rate of Interest upon this class of security is comparatively low. The Testator by inserting a clause authorizing the Trustees to use their discretion, will place the Company in a position to improve the returns, by investing in other absolutely safe securities.

Communications addressed to the Company by any desiring to obtain Special information, will be given prompt attention.

Wills, in which the Company is named as Executor, will be placed in the Company's Vaults free of charge, and proper receipts furnished for the Documents.

Prudential Trust Company, Limited

HEAD OFFICE:

Company's Building, St. John Street
MONTREAL

DIRECTORS

President and General Manager
B. Hal Brown

Vice-Presidents
Edmund Bristol, K.C., M.P.
W. G. Ross

Chairman of the Board
Farquhar Robertson

Herbert B. Ames, M.P.	Robt. Bickerdike, M.P.
Chas. A. Barnard, K.C.	C. Jackson Booth
W. M. Doull	Paul Galibert
Gilbert W. Ganong	W. J. Green
Sir George Garneau	W. J. Morrice
Colonel James Mason	W. Grant Morden
F. B. Pemberton	W. T. Rodden
W. Burton Stewart	Clarence F. Smith
J. P. Steedman	R. C. Smith, K.C.

Hon. J. M. Wilson

SOLICITORS

Messrs. Smith, Markey, Skinner
Pugsley & Hyde

COUNSEL

A. J. Brown, K.C.

James Emsly,
Secretary

C. D. Cornell,
Treasurer

STANDARD SECURITIES LIMITED

Buy Bonds

GOOD bonds have all the elements of security of real estate mortgages. They are fractional parts of carefully drawn mortgages on improved and productive property, and, in addition, are backed by the credit of prosperous business enterprises. They are readily salable at all times and the interest can be collected through any bank by presenting the coupons as they become due. Long-term bonds assure permanent investment of funds and save the trouble and possible risk of changing or renewing investments every few years. *Buy as you are able.*

Deferred payments upon any security may be arranged to suit your convenience, which allows you to invest in small amounts as you are able.

McGILL BUILDING
EIGHTH FLOOR
Corner Notre Dame & McGill Sts.
MONTREAL

We will be glad to send you a card of the "Rate of Income on Securities" upon request

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of