

# BILL

No. 13 of 1927

An Act respecting Wills

(Assented to \_\_\_\_\_, 1927.)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

## SHORT TITLE

1. This Act may be cited as "*The Wills Act.*"

## PART I

### INTERPRETATION

2. In this Part, unless the context otherwise requires—

- (a) "Made" and "making" shall include execution or signature, together with such other formalities as the law requires;
- (b) "Personal property" shall include leasehold estates and other chattels real, and also moneys, shares of Government and other funds, securities for money (not being real property), debts, *choses in action*, rights, credits, goods and all other property which by law devolves upon the executor or administrator (not being real property) and any share or interest therein;
- (c) "Real property" shall include messuages, lands, rents, and hereditaments, whether corporeal, incorporeal or personal and any undivided share thereof, and any estate, right or interest (other than a chattel interest) therein;
- (d) "Will" shall include a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power and any other testamentary disposition.

3.—(1) Every person may devise, bequeath or dispose of by will made in any of the ways hereinafter mentioned, all real and personal property which was devisable, bequeathable or disposable under the law existing prior to the passing of this Act.

(2) This section shall authorize an illegitimate or any other person whether he left an heir or next of kin surviving him or not, to dispose of real property by his will.

4. Except as hereinafter otherwise provided, no will made by any person under the age of twenty-one years shall be valid.

PERMITTED FORMS

5. Except as in this Part otherwise provided, no will shall be valid unless—

- (a) it is in writing and executed in manner hereinafter mentioned, that is to say:
  - (i) It shall be signed at the end or foot thereof by the testator or by some other person in his presence and by his direction; and
  - (ii) Such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
  - (iii) Such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary; or
- (b) it is a holograph will, wholly in the handwriting of the testator and signed by him, though not made or acknowledged in the presence of any witness; or
- (c) it is the will of a member of the naval, military, air or marine forces made in accordance with the provisions of section 6.

6.—(1) The will of a member of the naval, military, air or marine forces when in actual service, or of any mariner or seaman when at sea or in course of a voyage, may be made by a writing signed by him, or by some other person in his presence and by his direction, without any further formality or any requirement as to the presence of or attestation or signature by any witness.

(2) Such member of naval, military, air or marine forces shall be deemed to be in actual service after he has taken some step under the orders of a superior officer in view of and preparatory to joining the forces engaged in hostilities.

(3) The fact that such member of naval, military, air or marine forces, or such mariner or seaman, is an infant, at the time he makes his will, shall not invalidate the same.

7.—(1) Every will shall, so far only as regards the position of the signature of the testator or the person signing for him as aforesaid, be deemed to be valid, if the signature is so placed at or after or following or under or beside or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will.

(2) No such will shall be affected by the circumstance—

- (a) that the signature does not follow or is not immediately after the foot or end of the will; or

- (b) that a blank space intervenes between the concluding words of the will and the signature; or
- (c) that the signature is placed among the words of a *testimonium* clause or of a clause of attestation or follows or is after or under a clause of attestation either with or without a blank space intervening, or follows or is after or under or beside the name of a subscribing witness; or
- (d) that the signature is on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature; or
- (e) that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature.

(3) The enumeration of the above circumstances shall not restrict the generality of subsection (1) of this section, but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made.

**8.—(1)** No appointment made by will in exercise of any power shall be valid unless the same is made in a form permitted by this Part.

(2) Every will made in a form permitted by this Part, shall, so far as respects the formalities thereof, be a valid execution of a power of appointment by will, notwithstanding that it has been expressly required that a will in exercise of such power shall be made with some additional or other formality or formalities.

**9.** Every will made in a form permitted by this Part shall be valid without any further publication thereof.

#### WITNESSES

**10.** If any person who attests the execution of a will is at the time of the execution thereof or becomes at any time afterwards incompetent as a witness to prove the execution thereof, such will shall not on that account be invalid.

**11.** If any person attests the execution of a will to whom or to whose then wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal property (other than and except charges and directions for the payment of any debt or debts) is thereby given or made, such devise, legacy, estate, interest, gift or appointment shall so far only as concerns the person attesting the execution of such will or such wife or husband or any person claiming under such wife or husband, be null

and void, and the person so attesting shall be competent as a witness to prove the execution of the will or the validity or invalidity thereof:

Provided that where the will is sufficiently attested without the attestation of any such person or no attestation is necessary, such devise, legacy, gift or appointment shall not be null and void.

**12.** If by a will any real or personal property is charged with a debt or debts and any creditor or the wife or husband of any creditor whose debt is so charged, attests the execution of the will, the creditor, notwithstanding such charge, shall be competent as a witness to prove the execution of the will or the validity or invalidity thereof.

**13.** No person shall on account of his being an executor of a will be incompetent as a witness to prove the execution of the will, or the validity or invalidity thereof.

#### REVOCATION AND ALTERATION

**14.** Every will shall be revoked by the marriage of the testator, except—

- (a) where it is declared in the will that the same is made in contemplation of such marriage; or
- (b) where the will is made in exercise of a power of appointment and the real or personal property thereby appointed would not in default of such appointment pass to the heir, executor or administrator of the testator or to the persons entitled to the estate of the testator in case he died intestate.

**15.** No will shall be revoked by any presumption of an intention to revoke the same on the ground of an alteration in circumstances.

**16.** No will or any part thereof shall be revoked otherwise than as aforesaid, or—

- (a) by another will made in a form permitted by this Part; or
- (b) by some writing declaring an intention to revoke the same and made in a form in which a will is by this Part permitted to be made; or
- (c) by burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

**17.** No obliteration, interlineation, cancellation by drawing lines across the will or any part thereof or other alteration made in any will after the making thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration are not apparent unless

such alteration is made in form in which the will was made, but the will with such alteration as part thereof shall be deemed to be duly made if the signature of the testator and the subscription of the witnesses (if required) are made in the margin or in some part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or in some other part of the will.

**18.**—(1) No will or any part thereof which has been in any manner revoked shall be revived otherwise than by the re-signing thereof with the required formalities (if any) or by a codicil made in a form by this Part permitted and showing an intention to revive the same.

(2) When any will, which has been partly and afterwards wholly revoked is revived, such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

#### GENERAL PROVISIONS

**19.** No conveyance or other act of or relating to any real or personal property affected by a will and made or done subsequently to the making of the will, shall prevent the operation of the will with respect to such estate or interest as the testator had power to dispose of by will at the time of his death.

**20.** Unless a contrary intention appears by the will, every will shall be construed with reference to the real and personal property affected by it, to speak and take effect as if it had been made immediately before the death of the testator.

**21.** Unless a contrary intention appears by the will, such real property or interest therein as is comprised or intended to be comprised in any devise in the will contained which fails or becomes void by reason of the death of the devisee in the life-time of the testator, or by reason of the devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in the will.

**22.** A devise of the land of the testator or of the land of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estate of the testator or his leasehold estates, or any of them to which such description extends, as the case may be, as well as freehold estates, unless a contrary intention appears by the will.

**23.**—(1) A general devise of the real property of the testator or of the real property of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner, shall be construed to include any real property or any real property to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power, unless a contrary intention appears by the will.

(2) In like manner a bequest of the personal property of the testator or any bequest of personal property described in a general manner shall be construed to include any personal property or any personal property to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power, unless a contrary intention appears by the will.

**24.** Where any real property is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate which the testator had power to dispose of by will in such real property, unless a contrary intention appears by the will.

**25.** Where any real property is devised to the heir or heirs of the testator or of any other person and no contrary or other intention is signified by the will, the words "heir" and "heirs" shall be construed to mean the person or persons to whom such real property would descend under the law of the Province in the case of intestacy.

**26.** In any devise or bequest of real or personal property, the words "die without issue" or "die without leaving issue" or "have not issue" or any other words which import either a want or failure of issue of any person in his lifetime or at the time of his death or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of his issue, unless a contrary intention appears by the will; but this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift be born, or if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

**27.** Where any real property is devised to a trustee without any express limitation of the estate to be taken by such trustee and the beneficial interest in such real property or in the surplus rents and profits thereof, is not given to any person for life, or such beneficial interest is given to any person for life, but for the purposes of the trust may continue beyond the life of such person, such devise shall be

construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate and not an estate determinable when the purposes of the trust are satisfied.

**28.** Where any real property is devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real property unless a definite term of years absolute or determinable or an estate of freehold is thereby given to him expressly or by implication.

**29.** Where any person to whom any real property is devised for what would have been under the law of England an estate tail or an estate in *quasi entail* dies in the lifetime of the testator leaving issue, who would be inheritable under such entail, if such estate existed and any such issue are living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention appears by the will.

**30.** Where any person being a child or the other issue of the testator to whom, either as an individual or as a member of a class any real or personal property is devised, or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator, leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse, but shall, unless a contrary intention appears by the will, take effect as if it had been made directly to the persons amongst whom and in the shares in which such person's estate would have been divisible if he had died (intestate and without debts), immediately after the death of the testator.

**31.** Every illegitimate child of a woman shall be entitled to take under a testamentary gift by or to her or to her children or issue the same benefit as he or she would have been entitled to if legitimate.

**32.** When any person dies after the passing of this Act, having by will appointed any person executor thereof, such executor shall be deemed a trustee of any residue not expressly disposed of, for the person or persons, if any, who would be entitled thereto, in the event of intestacy in respect thereof, unless it appears by the will that the person so appointed executor was intended to take such residue beneficially; but nothing in this section shall affect or prejudice any right to which the executor, if this Act had not been passed, would have been entitled, in cases where there is not any such person or persons as aforesaid.

## PART II

**33.** In this Part, unless the context otherwise requires—

- (a) “Personal property” shall have the same meaning as in Part I;
- (b) “Will” shall have the same meaning as in Part I.

**34.** Every will made outside the Province by a British subject, whatever was the domicile of the testator at the time of making the same or at the time of his death, shall as regards personal property, be held to be well executed for the purpose of being admitted to probate, if the same is made according to a form permitted, either—

- (a) by the law of the place where the will was made; or
- (b) by the law of the place where the testator was domiciled when the will was made; or
- (c) by the law then in force in that part (if any) of His Majesty’s Dominions, where the testator had his domicile or origin.

**35.** Every will made within the Province, by a British subject, whatever was the domicile of the testator at the time of making the same, or at the time of his death, shall as regards personal property, be held to be well executed for the purpose of being admitted to probate, if the same is made in a form permitted by Part I hereof.

**36.** No will shall be held to be revoked or have become invalid, nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making the same.

**37.** Nothing in this Part contained shall invalidate any will as regards personal property which would have been valid if this Part had not been passed, except as such will may be revoked or altered by any subsequent will made valid by this Act.

**38.** This Part shall be construed as if it formed a separate enactment from Part I and had been assented to subsequently to Part I.

## SCOPE OF ACT

**39.** This Act shall not extend to the will of any person who dies before the first day of July, one thousand nine hundred and twenty-seven, and every will re-executed, re-published or revised by any codicil, shall for the purpose of this Act, be deemed to have been made at the time at which the same is so re-executed, re-published or revised.

## REPEAL

**40.** It is hereby declared that sections 26 to 35 inclusive of The North West Territories Act shall cease to be in force in the Province of Alberta.

## DATE OF COMING INTO FORCE

**41.** This Act shall come into force on . . . . .



No. 13.

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FIRST SESSION  
SIXTH LEGISLATURE  
17 GEORGE V  
1927

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**BILL**  
An Act respecting Wills

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. LYMBURN

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EDMONTON:  
W. D. McLEAN, ACTING KING'S PRINTER  
▲D. 1927