

# *The Surrogate Courts Act*

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Chapter 41 of *The Revised Statutes of Saskatchewan, 1920*  
(assented to November 10, 1920).

**NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER 41

### An Act respecting the Surrogate Courts

#### SHORT TITLE

##### Short title

- 1 This Act may be cited as *The Surrogate Courts Act*.

R.S.S. 1909, c.54, s.1; R.S.S. 1920, c.41, s.1.

#### INTERPRETATION

##### Interpretation

- 2 In this Act, unless the context otherwise requires, the expression:

##### “Will”

1. “**Will**” includes “testament” and all other testamentary instruments of which probate may now be granted;

##### “Administration”

2. “**Administration**” includes all letters of administration of the property of deceased persons whether with or without the will annexed and whether granted for general, special or limited purposes;

##### “Matters and causes testamentary”

3. “**Matters and causes testamentary**” includes all matters and causes relating to the grant and revocation of probate of wills or letters of administration;

##### “Common form business”

4. “**Common form business**” means the business of obtaining probate or administration where there is no contention as to the right thereto including the passing of probates and administration through a surrogate court when the contest is terminated and all business of a noncontentious nature to be taken in a surrogate court in matters of testacy and intestacy not being proceedings in any suit and also the business of lodging caveats against the grant of probate or administration.

R.S.S. 1909, c.54, s.2; R.S.S. 1920, c.41, s.2.

#### SURROGATE COURTS

##### A surrogate court in each judicial district

- 3 There shall be in and for every judicial district from time to time established under *The District Courts Act*, a court of record to be called “The Surrogate Court of the Judicial District of (*naming the judicial district*)” over which court one judge shall preside; and there shall also be a clerk and such officers as may be necessary for the exercise of the jurisdiction to the said court belonging.

R.S.S. 1909, c.54, s.3; R.S.S. 1920, c.41, s.3.

**Seal**

4 Each of the surrogate courts shall be provided with a suitable seal to be approved of by the Lieutenant Governor in Council and the judges of the said courts may respectively cause the same from time to time with the approval of the Lieutenant Governor in Council to be broken, altered or renewed; and all probates, letters of administration, grants, orders and other instruments and exemplifications and copies thereof respectively purporting to be sealed with the seal of any surrogate court shall in all courts and in all parts of Saskatchewan be received in evidence without further proof thereof.

R.S.S. 1909, c.54, s.4; R.S.S. 1920, c.41, s.4.

**Sittings where held**

5 The sittings of the court shall be held at such places in the judicial district as the Lieutenant Governor in Council appoints.

R.S.S. 1909, c.54, s.5 (redrawn); R.S.S. 1920, c.41, s.5.

## JUDGES

**Appointment of judges**

6 The judge of the surrogate court shall be appointed by the Lieutenant Governor in Council.

1918-19, c.28, s.1; R.S.S. 1920, c.41, s.6.

**Substitute judges**

7 Whenever by reason of illness, disability, absence by leave or other cause any judge is unable to act such judge may request any other surrogate judge to act in his place and the judge so requested shall have the same powers as the judge making the request would otherwise have had.

R.S.S. 1909, c.54, s.7; R.S.S. 1920, c.41, s.7.

**Oath of judge**

8 Every judge of a surrogate court shall before entering upon the duties of his office take the following oath:

I, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ in the Province of Saskatchewan, do swear that I will well and truly serve Our Sovereign Lord the King in the office of Judge of the Surrogate Court of the Judicial District of (*naming the judicial district*) and that I will truly and faithfully according to the best of my ability and knowledge execute the several duties imposed upon me as a judge of the said court. So help me God.

Sworn at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_, before me \_\_\_\_\_.

R.S.S. 1909, c.54, s.8; R.S.S. 1920, c.41, s.8.

## SURROGATE REGISTRAR AND CLERKS

**Registrar**

**9** There shall be an officer to be called the surrogate registrar who shall be deemed an officer of the Court of King's Bench and shall be appointed by the Lieutenant Governor in Council.

R.S.S. 1909, c.54, s.9 (redrawn); R.S.S. 1920, c.41, s.9.

**Clerk of court**

**10** There shall be a clerk for every surrogate court who shall be appointed by the Lieutenant Governor in Council.

R.S.S. 1909, c.54, s.10 (redrawn); R.S.S. 1920, c.41, s.10.

**Oath of clerk**

**11** Every clerk of a surrogate court shall before entering upon the duties of his office take the following oath:

I, \_\_\_\_\_, do solemnly and sincerely promise and swear that I will diligently and faithfully execute the office of clerk of the Surrogate Court of the Judicial District of (*naming the judicial district*), and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done by myself or others on any wills or testamentary papers or other documents or papers committed to my charge. So help me God.

R.S.S. 1909, c.54, s.11; R.S.S. 1920, c.41, s.11.

**Clerk's office**

**12** The clerk of every surrogate court may hold his office in the court house of the district and a room therein may be provided for that purpose and in the event of there being no room in the court house every such clerk may until such room is provided hold his office at such place as the judge of the court directs; and the office of every such clerk shall be a depository for all wills of living persons given to him for safekeeping; and all persons may deposit their wills in the said depository upon payment of such fees and under such regulations as may be directed by rules of court in that behalf made under this Act.

R.S.S. 1909, c.54, s.13; R.S.S. 1920, c.41, s.12.

**Clerks preserve testamentary instruments**

**13** The clerk of every surrogate court shall file and preserve all original wills and testamentary instruments of which probate or letters of administration with the will annexed are granted in such surrogate court and all other papers used in any matter in such court subject to such regulations as may from time to time be made by rules of court under this Act in relation to the due preservation thereof and the convenient inspection of the same.

R.S.S. 1909, c.54, s.14; R.S.S. 1920, c.41, s.13.

**Clerks transmit to registrar list of probates, etc.**

**14** On the third day of every month or oftener if required by rules of court made under this Act every clerk of a surrogate court shall transmit by mail to the surrogate registrar a list in such form and containing such particulars as may be required by such rules of court of the grants of probate and administration made by such surrogate court up to the last day of the preceding month and not included in any previous return and also a copy certified by such clerk to be a correct copy of every will to which any such probate or administration relates; and such clerk shall in like manner make a return of every revocation of a probate or administration.

R.S.S. 1909, c.54, s.15; R.S.S. 1920, c.41, s.14.

**Registrar and clerk not to take fees privately**

**15** Neither the surrogate registrar nor any clerk of the surrogate court shall for profit or reward draw or advise upon any will or other testamentary paper or upon any paper or document connected with the duties of his office.

R.S.S. 1909, c.54, s.16; R.S.S. 1920, c.41, s.15.

## JURISDICTION AND POWERS OF THE SURROGATE COURTS

**Testamentary jurisdiction**

**16** All jurisdiction and authority in relation to matters and causes testamentary and in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons having estate or effects in Saskatchewan and all matters arising out of or connected with the grant or revocation of probate or administration as was vested in or exercised by the Supreme Court of the North-West Territories immediately prior to the sixteenth day of September, 1907, shall be exercised in the name of His Majesty in the several surrogate courts; but this provision shall not be construed as depriving the Court of King's Bench of jurisdiction in such matters.

R.S.S. 1909, c.54, s.17; R.S.S. 1920, c.41, s.16.

**Powers and jurisdiction**

**17(1)** Every surrogate court shall have full power, jurisdiction and authority:

1. To issue process and hold cognisance of all matters relative to the granting of probate of wills and letters of administration and to grant probate of wills and letters of administration of the property of persons dying intestate and to revoke the same;
2. To hear and determine all questions, causes and suits in relation to such matters and to all matters and causes testamentary.

(2) Subject to the provisions herein contained every surrogate court shall also have the same powers and the grants and orders of every surrogate court shall have the same effect throughout Saskatchewan and in relation to the estate of deceased persons as the Supreme Court of the North-West Territories immediately prior to the sixteenth day of September, 1907, and its grants and orders respectively had in relation to those matters and to causes testamentary within its jurisdiction, and all duties which by statute or otherwise were imposed on or exercised by the said court or a judge thereof in respect of probates, administrations and matters and causes testamentary and otherwise shall be performed by the several surrogate courts and the judges thereof within their respective jurisdictions; but no action for legacies or for the distribution of residues shall be entertained by any of the said surrogate courts.

R.S.S. 1909, c.54, s.18; R.S.S. 1920, c.41, s.17.

**Court to which grant of probate or administration belongs**

**18(1)** The grant of probate or letters of administration shall belong to the surrogate court of the judicial district in which the testator or intestate had at the time of his death his fixed place of abode.

(2) If the testator or intestate had no fixed place of abode in or resided out of Saskatchewan at the time of his death the grant may be made by the surrogate court of any district in which the testator or intestate had property at the time of his death.

(3) In other cases the grant of probate or letters of administration shall belong to the surrogate court of any district.

R.S.S. 1909, c.54, s.19; R.S.S. 1920, c.41, s.18.

**Where judge is entitled to probate, application made to judge in adjoining district**

**19(1)** Where the person or one of the persons entitled to apply for probate of will or for letters of administration in judge of the surrogate court having jurisdiction in the matter and he does not renounce, application by him for such probate or letters and any subsequent application in the matter of the estate by him or any other person may be made to the judge of the surrogate court of an adjoining district who shall have the same authority in and about any such application and generally in all matters connected with the estate as if he were the judge of the surrogate court having jurisdiction.

(2) All proceedings shall be carried on in the surrogate court having jurisdiction.

R.S.S. 1909, c.54, s.20; R.S.S. 1920, c.41, s.19.

**Effect of probate and administration**

**20** Probate or letters of administration by whatever court granted shall unless revoked have effect over the real and personal property of the deceased in all parts of Saskatchewan.

R.S.S. 1909, c.54, s.21; R.S.S. 1920, c.41, s.20.

## POWER TO TRY BY JURY

**Questions of fact may be tried by jury**

**21** Every surrogate court may cause any question of fact arising in any proceeding under this Act to be tried by a jury before a judge of the court; and upon any order being made allowing a trial by jury such trial shall take place at some ensuing sittings of the surrogate court for the judicial district and be conducted in the same manner as trials by jury in the Court of King's Bench and the parties shall be entitled to their right of challenge; and for all purposes of or auxiliary to the trial of questions of fact by a jury before a judge of the surrogate court and in respect of new trials the said surrogate courts and the judges thereof respectively shall have the same jurisdiction, power and authority in all respects as belong to the Court of King's Bench and the judges thereof for like purposes.

R.S.S. 1909, c.54, s.22; R.S.S. 1920, c.41, s.21.

**Procedure on trial**

**22** When such question is ordered to be tried by a jury before a judge of a surrogate court the question shall be reduced into writing in such form as the court directs and at the trial the jury shall be sworn to try the said question and a true verdict give thereon according to the evidence; and upon every such trial the judge of the surrogate court shall have the same powers, jurisdiction and authority as belong to the judge of the Court of King's Bench sitting with a jury for the trial of issues of fact.

R.S.S. 1909, c.54, s.23; R.S.S. 1920, c.41, s.22.

## SITTINGS

**Sittings**

**23** There shall be four sittings in each year for hearing and determining matters and causes in contentious cases and business of a contentious nature which sittings shall commence on the second Monday in January and the first Monday in April, July and October and shall end on the Saturday of the same week.

R.S.S. 1909, c.54, s.24 (redrawn); R.S.S. 1920, c.41, s.23.

## WITNESSES, EVIDENCE, ETC.

**Attendance of parties or witnesses**

**24** Every surrogate court may require the attendance of any party in person or of any person whom it thinks fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary and may examine or cause to be examined upon oath or affirmation as the case may require parties and witnesses orally, and may either before or after or with or without such examination cause them or any of them to be examined on interrogatories or receive their or any of their affidavits or affirmations, as the case may be; and each of the said courts may by writ of subpoena or *subpoena duces tecum*, as the case may be, require such attendance and the production of any deeds, evidence or writings before such court or otherwise.

R.S.S. 1909, c.54, s.25; R.S.S. 1920, c.41, s.24.

**Orders and proceedings in respect to the production of testamentary instruments**

**25(1)** Whether any suit or other proceeding is or is not pending in the court with respect to any probate or administration every surrogate court may on motion or petition or otherwise in a summary way order any person to produce and bring before the clerk of the court or otherwise as the court directs any paper or writing being or purporting to be testamentary which is shown to be in the possession or under the control of such person.

(2) If it is not shown that any such paper or writing is in the possession or under the control of such person but if it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing the court may direct such person to attend for the purpose of being examined before the clerk or in open court or upon interrogatories respecting the same; and such person shall be bound to answer such questions or interrogatories and if so ordered to produce and bring in such paper or writing and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit in the court and had made such default; and the costs of such motion, petition or other proceeding shall be in the discretion of the court.

R.S.S. 1909, c.54, s.26; R.S.S. 1920, c.41, s.25.

**Administration of oaths**

**26** The judges and clerks of the surrogate courts and the surrogate registrar shall have full power to administer oaths in matters and causes testamentary and in all other matters in any of the said courts; and commissioners for oaths; justices of the peace and notaries public shall also have full power respectively to administer oaths in all matters and causes testamentary and in all other matters in the said courts to parties desirous of making affidavit or deposition before them respectively.

R.S.S. 1909, c.54, s.27; R.S.S. 1920, c.41, s.26.

**EVIDENCE IN CONTENTIOUS MATTERS****Mode of taking evidence in contentious matters**

**27** Subject to the rules of court or orders heretofore in force respecting surrogate matters or hereafter to be made under this Act the witnesses and where necessary the parties in all contentious matters where their attendance can be had shall be examined orally by or before the judge of the surrogate court in open court; and subject to any such rules of court or orders as aforesaid the parties may verify their respective cases by affidavit; but the deponent in every such affidavit shall on the application of the opposite party be subject to be cross examined by or on behalf of the opposite party orally in open court as aforesaid and after such cross examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

R.S.S. 1909, c.54, s.28; R.S.S. 1920, c.41, s.27.

### COMMISSIONS TO EXAMINE WITNESSES

#### Courts may issue commissions for the examination of witnesses

**28** Where a witness in any such matter is outside the limits of Saskatchewan or where by reason of his illness or otherwise the court does not think fit to enforce the attendance of the witness in open court the surrogate court may issue an order for the examination of such witness on oath upon interrogatories or otherwise or if the witness be within the jurisdiction of the court may order the examination of such witness on oath upon interrogatories or otherwise before any person to be named in such order for the purpose.

R.S.S. 1909, c.54, s.29; R.S.S. 1920, c.41, s.28.

#### Provisions of certain Acts to apply

**29** All the powers given to the Court of King's Bench by law for enabling the said court to issue commissions and make orders for the examination of witnesses in actions depending in such courts and to enforce such examination and all the provisions of law relating to the Court of King's Bench for enforcing examination or otherwise applicable thereto and to the witnesses examined shall extend and be applicable to the surrogate courts and to the examination of witnesses under the commissions and orders of the said courts and to the witnesses examined as if the matter before them respectively were an action pending in the Court of King's Bench.

R.S.S. 1909, c.54, s.30; R.S.S. 1920, c.41, s.29.

### RULES OF EVIDENCE

#### Rules of evidence

**30** The rules of evidence observed in the Court of King's Bench shall be applicable to and observed in the trial of all questions of fact in the surrogate courts.

R.S.S. 1909, c.54, s.31; R.S.S. 1920, c.41, s.30.

### ORDERS AND JUDGMENTS HOW ENFORCED

#### Enforcement of orders and judgments

**31** Every surrogate court shall have the like powers, jurisdiction and authority for enforcing the attendance of persons required by it as aforesaid and for punishing persons failing, neglecting or refusing to produce deeds, evidence or writings or refusing to appear or to be sworn or to make affirmation or to give evidence or guilty of contempt and generally for enforcing all orders and judgments made or given by the court under this Act or under any other Act giving jurisdiction to surrogate courts and otherwise in relation to the matters to be inquired into and done by or under the orders made under this Act as are vested in the Court of King's Bench in relation to any suit or matter depending in such court.

R.S.S. 1909, c.54, s.32; R.S.S. 1920, c.41, s.31.

## REMOVAL TO THE COURT OF KING'S BENCH

### Contentious matters referred by consent to Court of King's Bench

**32** In every case in which there is contention as to the grant of probate or administration and the parties in such case thereto agree the contention shall be referred to and determined by the Court of King's Bench on a case to be prepared; and the surrogate court having jurisdiction in the matter shall not grant probate or administration until the contention is terminated and disposed of by judgment or otherwise.

R.S.S. 1909, c.54, s.33; R.S.S. 1920, c.41, s.32.

### Contentious matters referred by judge's order

**33(1)** Any cause or proceeding in a surrogate court in which any contention arises as to the grant of probate or administration or in which any disputed question may be raised (as to law or facts) relating to matters and causes testamentary shall be removable by any party to the cause or proceeding into the Court of King's Bench by order of a judge of the said court to be obtained on a summary application supported by affidavit of which reasonable notice shall be given to the other parties concerned.

(2) The judge making the order may impose such terms as to payment or security for costs or otherwise as to him seems fit; but no cause or proceeding shall be so removed unless it is of such a nature and of such importance as to render it proper that the same should be withdrawn from the jurisdiction of the surrogate court and disposed of by the Court of King's Bench nor unless the estate of the deceased exceeds \$5,000 in value.

R.S.S. 1909, c.54, s.34; R.S.S. 1920, c.41, s.33.

### Power of Court of King's Bench

**34** Upon any cause or proceeding being so removed the Court of King's Bench shall have full power to determine the same and may cause any question of fact arising therein to be tried by a jury and otherwise deal with the same as with any cause or claim originally entered in the said court; and the final order or judgment made by the said court in any cause or proceeding removed as aforesaid shall for the guidance of the surrogate court be transmitted by the local registrar of the Court of King's Bench where such judgment is given to the clerk of the surrogate court from which the cause or proceeding was removed.

R.S.S. 1909, c.54, s.35; R.S.S. 1920, c.41, s.34.

## APPEALS TO THE COURT OF KING'S BENCH

### Appeals to Court of King's Bench/Appeals not to lie in certain cases

**35** Subject to the rules of court any person considering himself aggrieved by any order, sentence, judgment or decree of a surrogate court or being dissatisfied with the determination of the judge thereof in point of law in any matter or tcause under this Act may within fifteen days next after such order, sentence, judgment or determination appeal therefrom to a judge of the Court of King's Bench sitting in chambers and the said judge shall hear and determine such appeal; but no such appeal shall be had or lie unless the value of the property, goods, chattels, rights or credits to be affected by such order, sentence, judgment or determination exceeds \$200.

R.S.S. 1909, c.54, s.36; 1915, c.43, s.9; R.S.S. 1920, c.41, s.35.

## PRACTICE—PROOFS TO LEAD GRANT

**Practice of the courts**

**36** Unless otherwise provided by this Act or by the rules of court the practice of the surrogate courts shall so far as the circumstances of the case will admit be according to the practice in the Court of Probate in England as it stood on the fifteenth day of July, 1870.

R.S.S. 1909, c.54, s.37; R.S.S. 1920, c.41, s.36.

**Soldier's estate**

**37** On every application to a surrogate court, now pending or hereafter to be made, for probate of the will or letters of administration of the estate of a soldier who has died while on active service, proof of such soldier's death and the date thereof may be given by a certificate purporting to be signed by the officer commanding the military district on the strength of which the soldier is carried or was carried at the time of his death, or by the director or official in charge of military records, Department of Militia and Defence, Ottawa; or purporting to be given by the War Office, London, England, or by an official having charge of military records in Great Britain.

1918-19, c.28, s.2; R.S.S. 1920, c.41, s.37.

**Proof requisite when deceased a Saskatchewan resident**

**38** On every application to a surrogate court for probate of will or letters of administration where the testator or when intestate was resident in Saskatchewan at the time of his death the place of abode of the testator or intestate at the time of his death shall be made to appear by affidavit of the person or some one of the persons making the application; and thereupon and upon proof of the will or in case of intestacy upon proof that the deceased died intestate probate of the will or letters of administration, as the case may be, may be granted under the seal of the surrogate court to which the application has been so made.

R.S.S. 1909, c.54, s.38; R.S.S. 1920, c.41, s.38.

**Proof requisite when deceased resided out of province**

**39** On every application for probate of a will or letters of administration where the testator or intestate had no fixed place of abode in or resided out of Saskatchewan at the time of his death the same shall be made to appear by affidavit of the person or some one of the persons applying for the probate or administration and it shall also be made to appear by affidavit that the deceased died leaving personal or real property within the judicial district in the surrogate court of which the application is made or leaving no personal or real property in Saskatchewan, as the case may be; and thereupon and upon proof of the will or in case of intestacy upon proof that the deceased died intestate probate of the will or letters of administration, as the case may be, may be granted under the seal of such surrogate court to which such application is made.

R.S.S. 1909, c.54, s.39; R.S.S. 1920, c.41, s.39.

**Affidavit grounding application for grant conclusive for exercise of jurisdiction if acted on**

**40** The affidavit as to the place of abode and property of a testator or intestate under sections 38 and 39 for the purpose of giving a particular court jurisdiction shall be conclusive for the purpose of authorising the exercise of such jurisdiction; and no grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the particular district at the time of his death or had not property therein at the time of his death; and every probate and administration granted by a surrogate court shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder notwithstanding the want of or defect in such affidavit as is hereby required; but in case it is made to appear to the judge of a surrogate court before whom any matter is pending under this Act that the place of abode of the testator or intestate or the situation of his property has not been correctly stated in the affidavit the judge may stay all further proceedings and make such order as to the costs of the proceedings before him as he thinks just.

R.S.S. 1909, c.54, s.40; R.S.S. 1920, c.41, s.40.

**Proof requisite for obtaining grant to party not next of kin**

**41** In case application is made for letters of administration by a person not entitled to the same as next of kin to the deceased, the next of kin or others having or pretending interest in the property of the deceased resident in Saskatchewan shall be cited or summoned to show cause why the administration should not be granted to the person applying therefor; and if neither the next of kin nor any person of the kindred of the deceased resides in Saskatchewan then a copy of the citation or summons shall be served or published in such manner as may be provided for by rules of court in that behalf.

R.S.S. 1909, c.54, s.41; R.S.S. 1920, c.41, s.41.

**Temporary administration in certain cases**

**42** If the next of kin usually residing in Saskatchewan and regularly entitled to administer is absent from the province the surrogate court having jurisdiction in the matter may in its discretion grant a temporary administration and appoint the applicant or such other person as the court thinks fit to be administrator of the property of the deceased person for a limited time or to be revoked upon the return of such next of kin as aforesaid.

R.S.S. 1909, c.54, s.42; R.S.S. 1920, c.41, s.42.

**Security given**

**43** The administrator so appointed shall give such security as the court directs and shall have all the rights and powers of a general administrator and shall be subject to the immediate control of the court.

R.S.S. 1909, c.54, s.43; R.S.S. 1920, c.41, s.43.

## NOTICE OF APPLICATIONS SO AS TO AVOID DOUBLE GRANTS

**Notice of applications for grants of probates, to registrar by clerks**

**44** In case of an application to a surrogate court for the grant of probate or administration notice thereof shall be transmitted by the surrogate court by letter postpaid to the surrogate registrar by the next post after the application and the notice shall specify the name and description or addition, if any, of the testator or intestate, the time of his death and the place of his abode at his decease as stated in the affidavit or affidavits made in support of the application and the name of the person by whom the application has been made and such other particulars as may be directed by the rules of court in that behalf.

R.S.S. 1909, c.54, s.44; R.S.S. 1920, c.41, s.44.

**Proceedings stayed till certificate received from registrar**

**45** Except upon special order or judgment of the surrogate court no probate or administration shall be granted in pursuance of the application until the clerk has received a certificate under the hand of the surrogate registrar that no other application appears to have been made in respect of the property of the same deceased person which certificate the surrogate registrar shall forward as soon as may be to the clerk.

R.S.S. 1909, c.54, s.45; R.S.S. 1920, c.41, s.45.

**Registrar files notices**

**46** All notices in respect of applications in the several surrogate courts shall be filed and kept by the surrogate registrar.

R.S.S. 1909, c.54, s.46; R.S.S. 1920, c.41, s.46.

**Duty of registrar with reference to notices**

**47** The surrogate registrar shall with reference to every such notice examine all notices of such applications received from the several other surrogate court clerks so far as appears to be necessary to ascertain whether or not application for probate or administration in respect of the property of the same deceased person has been made in more than one surrogate court or whether notice of an appointment by the Court of King's Bench has been received and he shall communicate with the surrogate court clerks as occasion may require in relation to such applications; and all appointments by the Court of King's Bench shall be noted by the surrogate registrar in the application book.

R.S.S. 1909, c.54, s.47; R.S.S. 1920, c.41, s.47.

**Proceedings if application has been made to more than one surrogate court**

**48** In case it appears by the certificate of the surrogate registrar that application for probate or administration has been made to two or more surrogate courts the judges of such courts respectively shall stay proceedings therein leaving the parties to apply to one of the judges of the Court of King's Bench to give such direction in the matter as to him seems necessary.

R.S.S. 1909, c.54, s.48; R.S.S. 1920, c.41, s.48.

## SURROGATE COURTS

c. 41

**Judgment as to what court shall have jurisdiction**

**49** On application made to such judge of the Court of King's Bench he shall inquire into the matter in a summary way and adjudge and determine what surrogate court has jurisdiction and shall proceed in the matter.

R.S.S. 1909, c.54, s.49; R.S.S. 1920, c.41, s.49.

**Order as to costs**

**50** The judge of the Court of King's Bench may order costs to be paid by any of the applicants and the order shall be enforced by the Court of King's Bench.

R.S.S. 1909, c.54, s.50; R.S.S. 1920, c.41, s.50.

**Judge's decision final**

**51** The determination of the judge shall be final and conclusive and the surrogate registrar shall without any delay transmit a certified copy thereof to the clerks of the several surrogate courts wherein such applications as aforesaid have been made.

R.S.S. 1909, c.54, s.51; R.S.S. 1920, c.41, s.51.

## CAVEATS

**Practice respecting caveats**

**52** Caveats against the grant of probate or administration may be lodged with the surrogate registrar or with the clerk of any surrogate court and subject to any rules of court the practice and procedure under such caveats shall as nearly as may be correspond with the practice and procedure under caveats in use on the fifteenth day of July, 1870, in the Court of Probate in England.

R.S.S. 1909, c.54, s.52; R.S.S. 1920, c.41, s.52.

**Notice of caveats to be transmitted to proper courts**

**53** Immediately on a caveat being lodged in a surrogate court the clerk of the court shall without delay send a copy thereof to the surrogate registrar to be entered among the caveats lodged with him; and upon notice of an application being received from the clerk of a surrogate court under this Act the surrogate registrar shall without delay forward to the clerk notice of any caveat that has been so lodged as aforesaid touching such application and the notice shall accompany or be embodied with the certificate mentioned in section 45.

R.S.S. 1909, c.54, s.53; R.S.S. 1920, c.41, s.53.

## COPIES OF WILLS

**Official copy of the whole or a part of a will may be obtained**

**54** An official copy of the whole or any part of a will or an official certificate of the grant of any letters of administration may be obtained from the clerk of the surrogate court where the will has been proved or the administration granted on payment of such fees as may be fixed for the same by the rules of court made under this Act.

R.S.S. 1909, c.54, s.54; R.S.S. 1920, c.41, s.54.

## ADMINISTRATION PENDENTE LITE

**Administration *pendente lite* may be granted**

**55** Pending an action touching the validity of the will of any deceased person or for obtaining, recalling or revoking any probate or grant of administration the court in which an action is pending may appoint an administrator of the property of the deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of the property; and every such administrator shall be subject to the immediate control of the court and act under its direction; and the court may direct that such administrator shall receive out of the property of the deceased such reasonable remuneration as the court thinks fit.

R.S.S. 1909, c.54, s.55; R.S.S. 1920, c.41, s.55.

## ADMINISTRATION WITH WILL ANNEXED

**Administration with the will annexed, practice, as to**

**56** Where administration is granted with the will annexed a bond shall unless it is otherwise provided by law be given to the judge of the court as in other cases and with like effect and unless otherwise provided for by this Act or the rules of court relating to surrogate courts from time to time in force the practice and procedure in respect to such administrations and in respect to such bonds and the assignment thereof shall so far as the circumstances of the case admit be according to the practice in such cases in the Court of Probate in England on the fifteenth day of July, 1870.

R.S.S. 1909, c.54, s.56; R.S.S. 1920, c.41, s.56.

**Applicant for administration deposes to value of the realty**

**57** In every case where any person applies to be appointed an administrator with the will annexed and a bond is by law required to be given he shall in his application state and in his affidavit of the value of the property devolving depose to the value or probable value of all the real estate over which or over any estate in which the executor or executors named in the will or codicil were by the said will or codicil clothed with any power of disposition or of all the real estate which in case of no executor being appointed was by the will or codicil directed to be disposed of without any person being appointed to effect such disposition; and in every such case the bond to be given by such person upon his obtaining a grant of administration with the said will annexed shall as respects the amount of the penalty of the bond and the justification of the sureties include the amount of the value or probable value so stated and deposed to; and the condition of the bond shall in addition to the other provisions thereof provide that the administrator shall well and truly pay over and account for to the person or persons entitled to the same all moneys and assets to be received by him for or in consequence of the exercise by him of any power over real estate created by the will or codicil and which may be exercised by him.

R.S.S. 1909, c.54, s.57; R.S.S. 1920, c.41, s.57.

## POWER AS TO APPOINTMENT OF ADMINISTRATOR

### General power as to appointment of administrator under special circumstances

**58** Where a person has died wholly intestate as to his property or leaving a will affecting property but without having appointed an executor thereof willing and competent to take probate or where the executor was at time the death of such person resident out of Saskatchewan and it appears to the court to be necessary or convenient in such case by reason of the insolvency of the estate of the deceased or other special circumstances to appoint some person to be the administrator of the property of the deceased or of any part of such property other than the person who if this section had not been enacted would by law have been entitled to a grant of administration to such property it shall not be obligatory upon the court to grant administration of the property of such deceased person to the person who if this section had not been enacted would by law have been entitled to a grant thereof; but the court in its discretion may appoint such person as the court thinks fit upon his giving such security, if any, as the court directs; and every such administration may be as limited as the court thinks fit.

R.S.S. 1909, c.54, s.58; R.S.S. 1920, c.41, s.58.

### After grant of administration no person to act as executor

**59** After a grant of administration no person shall have power to sue or prosecute any action or otherwise act as executor of the deceased as to the property comprised in or affected by such grant of administration until such administration has been recalled or revoked.

R.S.S. 1909, c.54, s.59; R.S.S. 1920, c.41, s.59.

## REVOCATION OF TEMPORARY GRANTS

### Revocation of temporary grants of administration not to prejudice actions

**60** In case, before the revocation of any temporary administration, proceedings have been commenced by or against the administrator so appointed the court in which the proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration and of the grant of probate or administration which has been made consequent thereupon and the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceedings had been originally commenced by or against such new executor or administrator but subject to such conditions and variations, if any, as the court directs.

R.S.S. 1909, c.54, s.60; R.S.S. 1920, c.41, s.60.

## VALIDITY OF PAYMENTS UNDER REVOKED GRANTS

### Payments under probate or administration afterwards revoked are valid

**61** In case any probate or administration is revoked under this Act all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall be a legal discharge to the person making the same; and the executor or administrator who has acted under such revoked probate or administration may retain and reimburse himself in respect of payments made by him which the person to whom probate or administration is afterwards granted might have lawfully made.

R.S.S. 1909, c.54, s.61; R.S.S. 1920, c.41, s.61.

**Person making payment upon probate granted, indemnified, etc.**

**62** Subject to the provisions of *The Succession Duty Act* all persons and corporations making or permitting to be made any payment or transfer *bona fide* upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this Act shall be indemnified and protected in so doing notwithstanding any defect or circumstance whatsoever affecting the validity of the probate or letters of administration.

R.S.S. 1909, c.54, s.62; R.S.S. 1920, c.41, s.62.

## EXECUTOR RENOUNCING

**Right of executor renouncing probate, ceases absolutely**

**63** Where a person renounces probate of the will of which he is appointed an executor his rights in respect of the executorship shall wholly cease; and the representation to the testator and the administration of his effects shall and may without any further renunciation go, devolve and be committed in like manner as if he had not been appointed executor.

R.S.S. 1909, c.54, s.63; R.S.S. 1920, c.41, s.63.

## SECURITIES

**Persons receiving grants of administration give bonds, etc.**

**64** Except where otherwise provided by law every person to whom a grant of administration is committed shall give a bond to the judge of the surrogate court from which the grant is made to enure for the benefit of the judge of the court for the time being with one or more surety or sureties as may be required by the judge of such surrogate court conditioned for the due collecting, getting in and administering the real and personal estate of the deceased; and the bond shall be in the form prescribed by the rules of court made under this Act; and in cases not provided for by such rules the bond shall be in such form as the judge of the surrogate court by special order directs.

R.S.S. 1909, c.54, s.64; R.S.S. 1920, c.41, s.64.

**Penalty in bonds, etc., and as to dividing liabilities of sureties**

**65** Subject to the provisions of section 57 the bond shall be in a penalty of double the amount under which the real and personal estate and effects of the deceased have been sworn unless the judge directs that the same shall be reduced; and the judge may also direct that more bonds than one be given so as to limit the liability of any surety to such amount as the judge thinks reasonable.

R.S.S. 1909, c.54, s.65; R.S.S. 1920, c.41, s.65.

**Power of courts as to assignment of bonds**

**66** The judge on application made on motion or petition in a summary way and on being satisfied that the condition of the bond has been broken may order the clerk to assign the same to some person to be named in the order; and such person, his executors or administrators shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the judge of the court and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond.

R.S.S. 1909, c.54, s.66; R.S.S. 1920, c.41, s.66.

### ACCOUNTS OF EXECUTOR OR ADMINISTRATOR

**Approval of accounts by judge binding in Court of King's Bench**

**67** Where an executor or administrator has filed in the proper surrogate court an account of his dealings with the estate of which he is executor or administrator and the judge has approved thereof, in whole or in part, if the executor or administrator is subsequently required to pass his accounts in the Court of King's Bench such approval except so far as mistake or fraud is shown shall be binding upon any person who was notified of the proceedings taken before the surrogate judge or who was present or represented thereat and upon every one claiming under any such person.

R.S.S. 1909, c.54, s.67; R.S.S. 1920, c.41, s.67.

**Condition of bond**

**68** The oaths to be taken by executors and administrators and the bonds or other security to be given by administrators and letters probate and letters of administration shall require the executor and administrator to render a just and full account of his executorship or administration within two years after the grant.

R.S.S. 1909, c.54, s.68; R.S.S. 1920, c.41, s.68.

### ANCILLARY PROBATES AND LETTERS OF ADMINISTRATION

**Giving effect to ancillary probates**

**69(1)** Where any probate or letters of administration or other legal document purporting to be of the same nature granted by a court of competent jurisdiction in the United Kingdom or in any province or territory of Canada or in any other British province or in any of the states of the United States of America is produced to and a copy thereof deposited with the clerk of any surrogate court of this province and the prescribed fees are paid as on a grant of probate or administration the probate or letters of administration or other document aforesaid shall under the direction of the judge be sealed with the seal of the said surrogate court and shall thereupon be of the like force and effect in Saskatchewan as if the same had been originally granted by the said surrogate court; and shall so far as regards this province be subject to any orders of the last mentioned court or on appeal therefrom as if the probate or letters of administration had been granted thereby.

(2) For the purposes of this section a duplicate of any probate or letters of administration or other legal documents purporting to be of the same nature, or an exemplification thereof, sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

R.S.S. 1909, c.54, s.69; 1915, c.43, s.9; 1916, c.37, s.13; R.S.S. 1920, c.41, s.69.

**Filing applications for resealing**

**70** On all applications for resealing the affidavits and other papers required to be filed under the provisions of *The Succession Duty Act* shall be filed in the same manner as is required with respect to all other applications for probate or administration.

R.S.S. 1909, c.54, s.70; R.S.S. 1920, c.41, s.70.

**Security required**

**71** The letters of administration shall not except in the case of letters of administration granted to the public trustee appointed under the provisions of *The Public Trustee Act, 1906*, being chapter 55 of the Acts of the Parliament of the United Kingdom of Great Britain and Ireland passed in the sixth year of His late Majesty King Edward VII be sealed with the seal of the said surrogate court until a certificate has been filed under the hand of the clerk of the court which issued the letters that security has been given in such court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such court as the assets within Saskatchewan or in the absence of such certificate until like security is given to the judge of the surrogate court covering the assets in Saskatchewan as in the case of granting original letters of administration.

R.S.S. 1909, c.54, s.71; 1913, c.67, s.11; R.S.S. 1920, c.41, s.71.

## OFFICIAL ADMINISTRATOR

**Lieutenant Governor may appoint official administrator**

**72(1)** In each judicial district or for such other portion of the province as may be deemed desirable the Lieutenant Governor in Council may appoint an official administrator.

(2) An official administrator shall be either a trust company which has obtained the approval of the Lieutenant Governor in Council under the provisions of *The Trust Companies Act* or a barrister of not less than three years' standing.

(3) Whenever an official administrator dies, resigns or has been removed from office or has permanently removed from Saskatchewan or been appointed a judge of any court and any estate to which letters of administration have been granted to him is not fully administered the judge of the surrogate court of the judicial district in which the estate or some part thereof is situate may, upon the application of the official administrator for such judicial district if there is one, or of some other person if there is no such official administrator, revoke such letters of administration and may grant to such official administrator or other person letters of administration *de bonis non administratis* or *cum testamento annexo*, as the case requires.

R.S.S. 1909, c.54, s.72; R.S.S. 1920, c.41, s.72.

**Duty as to neglected property of deceased persons**

**73** When any person dies whether testate or intestate and his lands, personal estate and effects have not been taken possession of by his executors or next of kin the official administrator of the judicial district where the property or any of the property is situated is hereby empowered and it shall be his duty when the facts are brought to his notice to forthwith take possession of the said lands, personal estate and effects and the same to safely keep, preserve and protect and pending the grant of probate to an executor or the issue of letters of administration, as the case may be, the official administrator shall have all the powers of an executor or administrator.

R.S.S. 1909, c.54, s.73; R.S.S. 1920, c.41, s.73.

**Official administrator described as such on letters**

**74** Every official administrator taking out letters of administration to any estate as such official administrator shall be so described therein and shall be deemed to be acting as an official administrator thereunder.

1915, c.43, s.9; R.S.S. 1920, c.41, s.74.

**Issue of letters of administration to official administrator**

**75(1)** In the absence of any application for probate of a will or for letters of administration within one month after the decease of any person leaving property letters of administration to the lands, personal estate and effects of the deceased may be granted to the official administrator:

Provided nevertheless that such letters of administration may at any time after the grant thereof be revoked in the discretion of the judge upon the application of any executor applying for probate of will or next of kin or domiciliary executor or administrator of the deceased applying for letters of administration.

(2) After such administration the official administrator shall in all cases file in the court an account of such administration properly audited and certified as correct by an auditor acting under the authority of the Provincial Auditor.

(3) Excepting in the administration of estates which do not exceed in value the sum of \$200, the official administrator may at any time after the expiration of eighteen months from the date of the grant of the letters of administration be required by any person interested in the estate either as beneficiary or creditor to pass his accounts before the judge.

(4) No remuneration shall be allowed to an official administrator in any estate unless and until the accounts thereof have been first audited and certified to date by such auditor and the amount of the remuneration to be allowed has been first certified to by such auditor according to the tariff to be fixed by the Lieutenant Governor in Council.

(5) The official administrator shall pay to the Provincial Treasurer for the audit of his accounts such fees as may be determined by the Lieutenant Governor in Council, and may be allowed the same on passing his accounts as expenses necessarily incurred on behalf of the estate.

R.S.S. 1909, c.54, s.74; 1915, c.43, s.9; 1916, c.37, s.13; R.S.S. 1920, c.41, s.75.

**Security by official administrator**

**76(1)** Each official administrator shall furnish security to the satisfaction of the Lieutenant Governor in Council in the penal sum of \$5,000 conditioned for the due performance of his duties; but shall not otherwise be required to furnish security as administrator unless the judge specially so directs.

(2) Any person interested may by leave of the Attorney General institute proceedings in his own name on the security to be furnished by an official administrator without any assignment thereof and in case an official administrator is directed by a judge to furnish other security any person interested may by leave of the court or judge institute proceedings thereon without any assignment thereof.

R.S.S. 1909, c.54, s.75; R.S.S. 1920, c.41, s.76.

**Official administrator required to apply for letters of administration**

**77** After the expiry of one month from the death of any person leaving property any person interested in the estate may by written notice require the official administrator (if he has not already done so) to apply for letters of administration and it shall then be the duty of the said official administrator to make such application provided the person making such requisition shall, if the official administrator so desires, make such deposit with the official administrator as the judge deems sufficient to cover his costs, charges and expenses.

R.S.S. 1909, c.54, s.76; R.S.S. 1920, c.41, s.77.

**Intestacy where estate under \$200**

**78(1)** Upon the filing by the proper official administrator with the clerk of the surrogate court of the judicial district within which any deceased person had his last known place of abode that as far as can be ascertained such deceased person has not left a will or testamentary disposition and that his estate does not exceed in value the sum of \$200 such official administrator shall at the expiration of sixty days after the decease of such person or within that time if the judge so orders (unless some other person has applied for the grant to him of letters of administration or letters testamentary and such grant has been made) be the administrator of such estate to all intents and purposes as if letters of administration or letters testamentary had formally issued to him and the formal grant of probate or administration to him shall not be necessary.

(2) In any case in which the official administrator shall be the administrator of an estate under this section he shall without any order for that purpose advertise for claims once in a newspaper published weekly or semi-weekly at or near the last place of residence of the deceased and after the expiration of two months from said advertisement he shall proceed to distribute the estate having regard only to the claims of which he shall have had notice.

(3) After such administration the official administrator shall file in the court an account thereof verified on oath.

R.S.S. 1909, c.54, s.77; 1915, c.43, s.9(4)  
(redrawn); R.S.S. 1920, c.41, s.78.

**Yearly statement of emoluments**

**79** During the month of January in each year the official administrator shall furnish to the Lieutenant Governor in Council a statement in detail verified on oath of the emoluments of his office for the preceding year ending the thirty-first day of December.

R.S.S. 1909, c.54, s.78; R.S.S. 1920, c.41, s.79.

**FEES AND COSTS****Fees to officers**

**80** The clerks and officers of the surrogate courts and barristers and solicitors practising therein shall be entitled to take for the performance of duties and services under this Act such fees as may be fixed under the provisions hereinafter contained.

R.S.S. 1909, c.54, s.79; R.S.S. 1920, c.41, s.80.

**Judge's order for remuneration of executor or administrator**

**81(1)** The judge of any surrogate court may allow to the executor or trustee or administrator acting under a will or letters of administration a fair and reasonable allowance for his care, pains and trouble and his time expended in and about the executorship, trusteeship or administration of the estate and effects vested in him under the will or letters of administration and in administering, disposing of and arranging and settling the same and generally in arranging and settling the affairs of the estate and may make an order or orders from time to time therefor and the same shall be allowed to an executor, trustee or administrator on passing his accounts.

(2) Nothing in this section shall apply to any case in which the allowance is fixed by the instrument creating the trust.

R.S.S. 1909, c.54, s.80; R.S.S. 1920, c.41, s.81.

**Procedure and practice**

**82** The rules as to procedure and practice in the surrogate courts, and in relation to matters testamentary and letters of administration to the effects of deceased persons, approved by order of the Lieutenant Governor in Council promulgated the eleventh day of November, 1911, as amended and now in force, are hereby continued until altered under the authority of this Act; and no other fees than those specified in the said rules shall be taken or recovered by clerks, officers, barristers and solicitors.

R.S.S. 1909, c.54, s.81 (redrawn); R.S.S. 1920, c.41, s.82.

**Taxation of costs**

**83** The bill of any barrister or solicitor for any fees, charges or disbursements in respect of business transacted in a surrogate court whether contentious or otherwise or any matter connected therewith shall as well between solicitor and client as between party and party be subject to taxation in such surrogate court and the mode in which the bill shall be referred for taxation and the person by whom the costs of taxation shall be paid shall be regulated by the rules of court made under this Act; and the certificate of the clerk of the amount at which the bill is taxed shall be subject to appeal to the judge of the court.

R.S.S. 1909, c.54, s.82; R.S.S. 1920, c.41, s.83.

## RULES OF COURT

**Surrogate court rules**

**84** The judges of the Court of King's Bench shall have the same authority to make rules of court with respect to the surrogate courts as by section 57 of *The King's Bench Act* they have with respect to the Court of King's Bench.

R.S.S. 1909, c.54, s.83; R.S.S. 1920, c.41, s.84.

## SALARY OF JUDGE

**Judge's salary**

**85** There shall be paid to each of the judges of the surrogate courts hereby established out of the consolidated fund of the province a salary at the rate of \$1,500 per annum.

R.S.S. 1909, c.54, s.84; 1919-20, c.17, s.1; R.S.S. 1920, c.41, s.85.