

No. 324 of '94, sec. 1.

Heirs: 537 of '91, S.S. 67, 68



Refd 537 of
91 sched I, but
see sec. 6 of that
Act

ANNO TRICESIMO PRIMO

VICTORIÆ REGINÆ.

A.D. 1867. *SR 1104 p. 619.*

No. 29.

An Act for the amendment of the Law of Inheritance.

[Reserved, 19th December, 1867.]

WHEREAS it is expedient to amend the Law of Inheritance— Preamble.
Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. All lands of which any person shall die seised or possessed as owner without devising the same, or which he shall only partially devise, shall pass to and become vested in the personal representative of the person so dying, if undevised, absolutely; or, if partially devised, then subject to such partial devise: and such personal representative shall hold the said lands, and the unapplied proceeds thereof, in case the same shall be sold, for division or distribution in like manner as is now the case with chattel real property; and such lands shall be distributable and disposable in like manner as other personal assets without distinction as to order of application in the payment of debts or otherwise: Provided that mortgages, trusts, and equities upon or affecting such lands, shall be as valid and effectual as if the same had descended to the heir-at-law.

Lands of persons dying intestate to vest in personal representative for division.

*No 537 of 1891,
S. 67.*

2. Immediately upon letters of administration, or in the case of a partial devise or the deceased owner leaving a will affecting only personal estate upon probate of such will or letters of administration, with such will annexed, being granted, the estate of the deceased owner, in all his undevised or partially devised lands, shall vest in the person to whom such letters of administration or probate shall

Title of personal representative to relate back to death of deceased owner.

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shall be granted; if undeviseed absolutely, or if partially deviseed, then subject to such partial devise; and the title of such personal representative shall relate back to and be deemed to have arisen immediately upon the death of such owner, as if there had been no interval of time between such death and the grant of such letters of administration or probate, as the case may be; and the production of any such letters of administration or probate shall be conclusive evidence that the deceased owner did in fact die, without devising, either wholly or partially, any lands of which he died seised as owner, except as in such letters of administration or probate respectively may be limited or excepted.

Dower and curtesy abolished.

3. No widow shall be entitled to her dower, nor husband to his curtesy, out of any lands which shall pass under any of the provisions of this Act. *See S. 67 cases 191, 244*

Construction of word "heirs;" persons taking under this Act to take as assigns.

*No. 537 of 1891
S. 67*

4. In the reading and construction of all Acts of Parliament, and all deeds and documents that shall from time to time after the day on which this Act shall come into operation, subsist and be in force, the word "Heirs," so far as relates to the deceased owners of undeviseed or partially deviseed lands, shall be taken to mean and include the person to whom letters of administration of the personal estate or probate of the will of such deceased owner where such will only partially devisees his lands, or only affects personal estate, shall be granted; and any person who shall take any lands by virtue of this Act shall so take as if the same had come to him by will of the deceased owner.

Persons entitled under will may claim conveyance of land, or payment of proceeds if undistributed.

5. Notwithstanding anything herein contained any person who, but for the grant of letters of administration or probate to the personal representative as hereinbefore provided, would have been entitled under the will of any deceased owner to any land, or any estate or interest in land, or the proceeds thereof, shall be entitled to a conveyance of such land, estate, or interest from the personal representative, if the same shall remain unsold, and, if sold, then to an account of such sale, and of the distribution of the proceeds thereof, and to receive from him such proceeds, if undistributed, subject to all just allowances.

Personal representative not liable for acts done *bonâ fide*.

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S. 67
it shall in fact
Proviso.
or in case
probate.*

6. No personal representative, making [any payment, or doing any act *bonâ fide* under or in pursuance of any letters of administration, or probate as aforesaid, shall be liable for the sums so paid, or the acts so done by reason of the existence of any will of the deceased owner, or any such will other than that of which probate has been granted, if the existence of such will, or such other will as the case may be, was unknown to him at the time of such payments made, or act *bonâ fide* done as aforesaid: Provided that nothing herein contained shall affect or prejudice the rights of any person entitled under such will against the person to whom any such payments shall have been made as aforesaid, but the person so entitled shall have the same remedy against the person to whom such payment

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ment shall have been made as he would have had against such personal representative if the money had not been distributed under the provisions of this Act.

7. The Supreme Court, in its Equitable Jurisdiction may from time to time, upon the petition of the personal representative, or any person beneficially interested, and after such previous notice as may be prescribed by the rules of the Court in that behalf, and upon such inquiry as it shall think fit, order and direct the course of proceeding which shall be taken in regard to the time and mode of sale of any lands passing under this Act, the letting and management thereof until sale, the application for maintenance or advancement or otherwise of shares or interests of infants, the expediency and mode of effecting a partition, if applied for, and generally in regard to the administration of the property for the greatest advantage of all persons interested.

Supreme Court may make special orders as to management of undivided lands.

8. In any case wherein upon such inquiry the Court shall be satisfied that a partition of the land would be advantageous to the parties interested therein, the Court may appoint one or more arbitrators to effect such partition, and to exercise in regard thereto, under its direction and control, powers similar to those of Commissioners acting under a decree in Equity for partition; And upon the report and final award of the said arbitrators setting forth the particulars of the land allotted to each party interested, the personal representative shall convey or transfer the same according.

Court may order partition.

9. No personal representative shall be required, against his own consent, to continue the duty of a trustee by managing the property during an enforced suspension of sale, but shall be entitled, upon such suspension being ordered, to relinquish his trust to such officer of the Court or any other person as the Court shall appoint.

Personal representative not required to continue to act against his own consent.

10. Every personal representative, to whom lands shall pass under the provisions of this Act, shall enter into the like bond, and make and exhibit the like accounts in reference to such lands, and shall be liable to the like penalties for neglect as may for the time being be required to be entered into, made, or exhibited by, or as may be enforced against any person to whom letters of administration of the personal estate of any person dying intestate is granted by the said Court in its Testamentary Causes Jurisdiction: Provided that in the case of an administrator one bond shall be sufficient as to both real and personal property, but the penalty thereof shall be double the amount under which both the real and personal property of the deceased shall be sworn, unless the Court or a Judge shall otherwise order.

Personal representative, to enter into bond, &c.

11. The said Court, in its Testamentary Causes Jurisdiction, or any two of the Judges thereof, whereof the Chief Justice shall be one, shall have power from time to time to make such rules and regulations for the ordinary guidance of personal representatives in relation

Supreme Court to make rules.

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tion to lands passing under this Act, and for prescribing the forms of probates or letters of administration when the same are intended to pass lands under the provisions hereof, and for regulating the practice to be observed in obtaining the grant of any such probate or letters of administration, and the form of and amount for which any such personal representatives are to give bond, and generally for carrying the provisions of this Act into effect as to the said Court or Judges shall appear expedient, all which rules and regulations shall be made and promulgated, and shall have the same force and effect, and may be revoked or amended in the like manner as other rules and regulations affecting the practice and procedure of the said Court in its Testamentary Causes Jurisdiction.

Interpretation of terms.

12. In the construction of this Act, unless the context shall be inconsistent with the meaning hereby assigned—"Lands" shall mean and extend to messuages, lands, tenements, rents, and hereditaments, and whether corporeal or incorporeal, and to any share, estate, and interest in them, or any of them, whether the same shall be freehold or chattel interest; and to any possibility, right, or title of entry or action, whether the same shall be in possession, reversion, remainder, or contingency: "Owner" shall mean any person seised or possessed of, or entitled to any beneficial estate or interest in lands as before defined, whether legal or equitable, which he had, or would were he of full age have had power to dispose of by will, and which but for this Act would go to his heir-at-law, or his executor or administrator.

Commencement of Act.

13. This Act shall take effect from a day to be fixed by the Governor by Proclamation in the *Government Gazette*, such day to be not less than three nor more than six calendar months from the day upon which notice of Her Majesty's approval of the same shall be published in the said *Gazette*.

Short title.

14. This Act may be cited and referred to for all purposes as "The Intestate Real Estates Distribution Act, 1867."

I hereby reserve this Act for the signification of the Queen's pleasure thereon.

D. DALY, Governor.