



Law of Property Act 1922

1922 CHAPTER 16

PART I

ASSIMILATION AND AMENDMENT OF THE LAW OF REAL AND PERSONAL ESTATE.

Amendments of the General Law.

17 Abolition of technicalities respecting the creation of entailed interests and of the rule in Shelley's case.

- (1) From and after the commencement of this Act, an interest in tail or in tail male or in tail female or in tail special (in this Act referred to as " an entailed interest ") may be created in equity in any property, real or personal, but only by the like expressions as before the commencement of this Act a similar estate tail could have been created by deed (not being an executory instrument) in freehold land, and with the like results, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee.
- (2) Expressions contained in an instrument coming into operation after the commencement of this Act, which, in a will, or executory instrument coming into operation before such commencement, would have created an entailed interest in freehold land, but would not have been effectual for that purpose in a deed (not being an executory instrument) shall (save as next hereinafter provided) operate in equity, in regard to property real or personal, to create absolute, fee simple or other interests corresponding to those which, if the property affected had been personal estate, would have been created therein by similar expressions before the commencement of this Act:

Provided that where, by any instrument coming into operation after the commencement of this Act, an interest is expressed to be given to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person in words which, but for this proviso, would, under the rule of law known as the Rule in Shelley's case, have operated to give to that person an interest in fee simple or an entailed interest, such words shall operate in equity as words of purchase and not of limitation,

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and shall be construed and have effect accordingly : and in the case of an interest expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person or persons shall take as would in the case of freehold land have answered that description if this Act had not been passed.

- (3) Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after the commencement of this Act, directed to be enjoyed or held with or upon trusts corresponding to trusts affecting land in which, either before or after the commencement of this Act an entailed interest has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate.
- (4) In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by this Act, an entailed interest (to the extent of the property affected) shall devolve in equity, from time to time, upon the persons who would have been successively entitled thereto as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, if the entailed interest had, before the commencement of this Act, been limited in respect of freehold land, and this Act had not been passed.
- (5) Section thirty-two of the Fines and Recoveries Act, 1833 (relating to the appointment of special protectors of a settlement), is hereby repealed as respects settlements made or coming into operation after the commencement of this Act.
- (6) An entailed interest shall only be capable of being created by a settlement of real or personal property or the proceeds of sale thereof (including the will of a person dying after the commencement of this Act), or by an agreement for a settlement in which the trusts to affect the property are sufficiently declared; and in this Act, where the context so admits, the expression "entailed interest" includes an estate tail (by this Part of this Act made to take effect in equity; created before the commencement of this Act.

18 Abolition of the double possibility rule.

- (1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of such person is hereby abolished, but without prejudice to any other rule relating to perpetuities.
- (2) This section only applies to limitations or trusts created by an instrument coming into operation after the commencement of this Act.

19 As to heirs taking by purchase.

- (1) A limitation of real or personal property in favour of the heir (either general or special) of a deceased person which, if limited in respect of freehold land before the commencement of this Act, would have conferred on the heir an estate in the land by purchase, shall operate in equity to confer a corresponding equitable interest in the property on the person who would, if this Act had not been passed, have answered the description of the heir (either general or special) of the deceased, in respect of his freehold land, either at the death of the deceased or at the time named in the limitation, as the case may require.
- (2) This section applies whether or not the deceased person dies before or after the commencement of this Act but only applies to limitations or trusts created by an instrument coming into operation after such commencement.