



Law of Property Act 1922

1922 CHAPTER 16

PART IX

REPEAL AND RE-ENACTMENT, WITH AMENDMENTS, OF PART I. OF THE LAND TRANSFER ACT, 1897, RELATING TO PERSONAL REPRESENTATIVES.

155 Meaning of " real estate " and constitution of representative in regard to interests therein not ceasing on the death.

- (1) In this Part of this Act the expression " real estate " includes—
 - (i) Chattels real, and land in possession, remainder, or reversion, and every interest in pr over land to which a deceased person was entitled at the time of his death:
 - (ii) Real estate held on trust or by way of mortgage (by demise or subdemise) or security, but not money to arise under a trust for sale of land, nor money secured or charged on land.
- (2) A testator shall be deemed to have been entitled at his death to any interest in real estate, passing under any gift contained in his will which operates as an appointment under a general power to appoint by will, or under the testamentary power conferred by this Act to dispose of an entailed interest.
- (3) The interest of a deceased person under an estate tail or an entailed interest shall (unless disposed of under the testamentary power conferred by this Act) be deemed an interest ceasing on his death, but any further or other interest of the deceased in remainder or reversion which is capable of being disposed of by his will shall not be deemed to be an interest so ceasing.
- (4) The interest of a deceased person under a joint tenancy where another tenant survives the deceased shall be deemed an interest ceasing on his death.
- (5) On the death of a corporator sole his interest in the corporation's real and personal estate shall be deemed to be an interest ceasing on his death and shall devolve to his successor.

- (6) The personal representative shall be the representative of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate.
- (7) After the commencement of this Act, probate or letters of administration shall not be granted to more than four persons in regard to the same property; and letters of administration shall, if there is a minority or a life interest arises under the will or intestacy, be granted either to a trust corporation (with or without an individual) or to not less than two individuals.

156 Devolution of real estate to personal representative.

- (1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Act chattels real devolved on the personal representative from time to time of a deceased person.
- (2) All enactments and rules of law, and all jurisdiction of any court with respect to the appointment of administrators or to probate or letters of administration, or dealings before probate in the case of chattels real, and with respect to costs and other matters in the administration of personal estate in force before the commencement of this Act, and all powers, duties, rights, equities, obligations, and liabilities of a personal representative in force at the commencement of this Act with respect to chattels real, shall apply and attach to the personal representative and shall have effect with respect to real estate vested in him, and in particular all the like powers for the survivors or survivor of two or more personal representatives, as well as for a single personal representative, and for all the personal representatives together to dispose of or otherwise deal with real estate, shall, as in case of personal representatives with respect to chattels real before the commencement of this Act, belong to the personal representatives or representative of a deceased person with respect to his real estate.
- (3) The personal representatives for the time being of a deceased person shall be deemed in law his heirs and assigns within the meaning of all trusts and powers, binding or conferred on him as a trustee or mortgagee of real estate.
- (4) Provided that, where there are two or more personal representatives, a conveyance of real estate devolving under this section shall not be made without the concurrence therein of all such representatives or an order of the court; save that where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor or executors for the time being, without an order of the court, and shall be as effectual as if all the persons named as executors had concurred therein.
- (5) Where an executor who has renounced probate is permitted to withdraw the renunciation and prove the will, such probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of any other personal representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.
- (6) It is hereby declared that all conveyances of any interest in real or personal estate made to a purchaser either before or after the commencement of this Act by a person

claiming to be a personal representative of a deceased person and to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation (either before or after the commencement of this Act) of the probate or letters of administration, but this subsection shall take effect without prejudice to any order of the court made before the commencement of this Act.

- (7) Probate and letters of administration may be granted in respect of the real estate of a deceased person or any part thereof, and either separately or together with his personal estate, and may also be granted in respect of real estate only where there is no personal estate, and a grant of letters of administration to real estate may be limited in any way the court thinks proper.
- (8) In granting letters of administration the court shall have regard to the rights of all persons interested in the real and personal estate Of the deceased person, or the proceeds of sale thereof, and in particular letters of administration, with the will annexed, may be granted to a devisee or legatee; and in regard to land settled previously to the death of the deceased, and not by his will, may be granted to the trustees of the settlement
- (9) Provision may be made by rules of court for giving effect to the provisions of this Part of this Act and in particular for adapting the procedure and practice on the grant of letters of administration to the case of real estate; and for dispensing "with sureties to administration bonds where the grant is made to a trust corporation or to two or more individuals, or in any other proper case.
- (10) Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real estate shall not (save as hereinafter provided) affect any rule as to marshalling or as to administration of assets, nor the beneficial interest in real estate under any testamentary disposition, nor any mode of dealing with any beneficial interest in real estate, or the proceeds of sale thereof, nor the right of any person claiming to be interested in the real estate to take proceedings for the protection or recovery thereof against any person, other than the personal representative :

Provided that in the case of deaths occurring after the commencement of this Act the real and personal estate of the deceased shall (but without prejudice to the right of retainer of a personal representative or his right to make preferential payments or transfers) be administered in accordance with the rules applicable to the administration of estates by the court, and the rules applicable to the administration of assets out of court or in bankruptcy are hereby abolished.

- (11) Section thirty of the Conveyancing Act, 1881, Part I., sections one to five (inclusive), of the Land Transfer Act, 1897, and section twelve of the Conveyancing Act, 1911, are hereby repealed as regards England and Wales as respects deaths occurring after the commencement of this Act.
- (12) Nothing in this Part of this Act shall alter any duty payable in respect of real estate or impose any new duty thereon.
- (13) Section three of the Wills Act, 1837, shall (without prejudice to the rights and interests of the personal representative under this section or under Part I. of the Land Transfer Act, 1897) authorise and be deemed always to have authorised a bastard or any other person, whether he left an heir or any next of kin surviving him or not, to dispose of real estate by his will.

- (14) This section applies to the case of every person dying after the commencement of this Act, and binds the Crown, the Duchy of Lancaster, and the Duke of Cornwall for the time being.

157 Abolition of syndics in the case of trust corporations.

- (1) Where a trust corporation is appointed an executor, either alone or jointly with another person, the court may grant probate to such corporation either solely or jointly with another person, as the case may require, and the corporation may act as executor accordingly.
- (2) Letters of administration may be granted to any such corporation either solely or jointly with another person, and the corporation may act as administrator accordingly.
- (3) After the commencement of this Act no probate or letters of administration shall be granted to a syndic or nominee on behalf of any such corporation.
- (4) Any officer authorised for the purpose by such corporation or their directors or governing body may swear affidavits, give security, and do any other act or thing which the court may require on behalf of the trust corporation with a view to the grant of probate or letters of administration to the corporation, and the acts of such officer shall be binding on the corporation, and he shall be entitled to be kept indemnified by the corporation in regard to matters so authorised as aforesaid.
- (5) Where, at the commencement of this Act, any interest in real or personal estate is vested in a syndic on behalf of any such corporation acting as the personal representatives of a deceased person, the same shall, by virtue of this Act, vest in the corporation, and the syndic shall be kept indemnified by the corporation in regard to any interest so vested.
- (6) This section shall have effect without prejudice to any other statutory power to grant probate to a corporation.

158 Effect of assent or conveyance by personal representative.

- (1) A personal representative may assent to the vesting in any person who may be interested, either beneficially or as a trustee or personal representative, of any real estate to which the testator or intestate was entitled, and which devolved upon the personal representative; and the assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased; and the statutory covenants referred to in subsection (1) (F) of section seven of the Conveyancing Act, 1881, may be implied in an assent in like manner as in a conveyance by deed.
- (2) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.
- (3) A statement in writing by a personal representative that he has not given or made an assent or conveyance of a legal estate, shall, in favour of a purchaser (but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative), be sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate

to which the statement relates, and a personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration, and a conveyance by him of a legal estate to a purchaser made on the faith of such a statement shall (without prejudice as aforesaid) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative.

- (4) An assent or conveyance by a personal representative of a legal estate shall, in favour of a purchaser, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him, and upon the proper trusts (if any), but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon.
- (5) A conveyance of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.
- (6) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified by such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.
- (7) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability.
- (8) An assent may, in the case of land registered under the Land Transfer Acts, be in the form prescribed under those Acts, and the production of the assent in the prescribed form shall authorise the Land Registrar to register the person named in the assent as proprietor of the land.
- (9) This section shall not operate to impose any stamp duty in respect of an assent.
- (10) Where the personal representatives of the deceased are registered as proprietors of the land on his death, a fee shall not be chargeable for registering any disposition of the land by them unless the disposition is for valuable consideration.

159 As to giving possession and enforcing rights against personal representative.

- (1) A personal representative, before giving an assent or making a conveyance in favour of any person entitled, may permit such person to take possession of the land, and such possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to convey the land as if he were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.
- (2) Any person interested, claiming possession, the appointment of a receiver, or a conveyance, or an assent to the vesting of real estate, or to be registered as proprietor thereof under the Land Transfer Acts, may apply to the court for directions with reference thereto, and the court may make such vesting or other order as may be deemed proper.

160 Appropriation of property by personal representative in satisfaction of legacy or share.

- (1) The personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, whether settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased:

Provided that—

- (i) An appropriation shall not be made under this section in respect of or so as to affect prejudicially any specific devise or bequest;
 - (ii) An appropriation of property, whether or not being an investment authorised by law or by the will (if any) of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the consent of the following persons, namely :—
 - (a) Of the person (if any) of full age and capacity absolutely and beneficially entitled;
 - (b) When made for the benefit of an infant or lunatic (whether so found or not) or defective, whether or not the legacy share or interest is settled, of his testamentary or other guardian, committee, or receiver on his behalf;
 - (c) When made in respect of any settled legacy share or interest, either of the trustee (not being also the personal representative), if any, thereof, or of the person (if any) of full age and capacity who may for the time being be entitled to the income :
 - (iii) No consent shall (save of such trustee as aforesaid) be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time :
 - (iv) If no committee or receiver of a lunatic or defective has been appointed then, if the appropriation is of an investment authorised by law or by the will (if any) of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the lunatic or defective :
 - (v) If, independently of the personal representative, there shall be no trustee of a settled legacy share or interest, and no person of full age and capacity entitled to the income thereof, then (without prejudice to the provisions relating to consents on behalf of infants, lunatics, and defectives) no consent shall be required to an appropriation in respect of such legacy share or interest, provided that the appropriation is of an investment authorised as aforesaid;
 - (vi) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an investment authorised for the purposes of the trust, and may be retained or dealt with accordingly.
- (2) For the purposes of such appropriation, the personal representative may (by a duly qualified agent) ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit; and may make any conveyance which may be requisite for giving effect to the appropriation.
- (3) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

- (4) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this section.
- (5) This section shall not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and shall take effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.
- (6) In this section, a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation.
- (7) In favour of a purchaser, any disposition of real estate or any interest therein made in purported exercise of the powers conferred by this section shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents (if any) have been given.
- (8) In the case of registered land, the production of the evidence prescribed under the Land Transfer Acts of an appropriation under this section shall authorise the Land Registrar to register the person to whom the property is appropriated as proprietor of the land.
- (9) This section applies only in the case of deaths occurring after the commencement of this Act, but applies whether the deceased died intestate or not.

161 Appointment of special or additional personal representatives in the case of settled land.

- (1) Where settled land becomes, under Part I. of this Act, vested in a personal representative not being a trustee of the settlement upon trust to convey the same to or assent to the same vesting in the tenant for life of full age or statutory owner in order to give effect to a settlement created before the death of the deceased and not by his will, such representative may, either before or after probate or letters of administration have been granted, disclaim his office in regard only to such settled land without disclaiming the same in regard to other property.
- (2) Whether such disclaimer is made or not, the trustees of the settlement, or any person beneficially interested thereunder, may apply to the Chancery Division of the High Court for an order appointing a special or additional personal representative in respect of the settled land; and a special or additional personal representative, when appointed under the order, shall be in the same position as if probate or administration had originally been granted to him alone in place of the original personal representative or to him jointly with the original personal representative, as the case may be, limited to the settled land, but without prejudice to the previous acts and dealings (if any) of the personal representative originally constituted.
- (3) The court may make such order as aforesaid subject to such security, if any, being given by or on behalf of the special or additional personal representative, as the court may direct, and shall, unless the court considers that special considerations apply, appoint such persons as may be necessary to secure that the representatives to act in respect

of the settled land shall be the same persons as are the trustees of the settlement; and an office copy of the order when made shall be furnished to the Principal Probate Registry for entry, and a memorandum of the order shall be endorsed on the probate or letters of administration.

- (4) A testator may appoint as his special executors, in regard to settled land, the persons who are at his death the trustees of the settlement thereof, and may appoint other persons, either with or without such trustees or any of them, to be his general executors in regard to his other property and assets, and probate may be granted to such trustees specially limited to the settled land. A testator who dies after the commencement of this Act shall, in default of an express appointment to the like effect, be deemed to have appointed the persons who, at his death, are the trustees of the settlement to be his executors in regard to the settled land.
- (5) The special personal representatives may dispose of the settled land without the concurrence of the general personal representatives, who may likewise dispose of the other property and assets of the deceased without the concurrence of the special personal representatives; and in this subsection the expression " special personal representatives " means the representatives appointed to act for the purposes of settled land and includes any original personal representative who is to act with, an additional personal representative for those purposes.
- (6) Where settled land becomes vested in a corporation as a personal representative on trust to give effect to a settlement created before the death of the testator and not by his will, then any fee chargeable by the corporation for the acceptance of the office of personal representative shall be discharged exclusively out of the free property and assets of the testator in exoneration of the settled land, unless the corporation was acting as the trustee of the settlement.
- (7) The person applying for the appointment of a special or additional personal representative shall give notice of the application to the Principal Probate Registry in the manner prescribed.
- (8) Rules of court may be made for prescribing for all matters required for giving effect to the provisions of this section, and in particular—
 - (a) For notice of any application being given to the proper officer;
 - (b) For production of orders, probates, and letters of administration to the registry ;
 - (c) For the endorsement on a probate or letters of administration of a memorandum of an order, subject or not to any exceptions ;
 - (d) For the manner in which the costs are to be borne;
 - (e) For protecting purchasers, trustees, and other persons in a fiduciary position, dealing in good faith with a personal representative before notice of any order has been endorsed on the probate or letters of administration or a *lis pendens* has been registered in respect of the proceedings.

162 Powers of personal representatives in regard to administration.

- (1) The personal representative may limit or demise land for a term of years absolute, with or without impeachment for waste, to trustees on usual trusts for raising or securing any principal sum and the interest thereon for which the real estate, or any part thereof, is liable, and may limit or grant a rentcharge for giving effect to any annual or periodical sum for which the land or the income thereof or any part thereof is liable.

- (2) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, then all the powers which are by law conferred on the personal representatives or representative may be exercised by the proving executors or executor for the time being and shall be as effectual as if all the persons named as executors had concurred therein.

163 Powers of management.

- (1) In dealing with the real and personal estate of the deceased his personal representatives shall, for purposes of administration, or during any minority or the subsistence of any life interest, or until the period of distribution arrives, have—
- (i) The same powers and discretions, including power to raise money by mortgage (as regards land by demise or subdemise or by charge by way of legal mortgage) or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Act, with respect to personal estate vested in him; and
 - (ii) All the powers (including power to override equitable interests and powers as if the same affected the proceeds of sale), discretions, and duties conferred or imposed by law on trustees holding land upon an effectual trust for sale : Provided that nothing in this section shall authorise a sole personal representative (not being a trust corporation) to override equitable interests and powers which are paramount to his legal estate ; and
 - (iii) All the powers conferred (whether by reference to the Settled Land Acts or otherwise) by Part I. of this Act on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable , against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded by him and in the case of a contract entered into by a predecessor, as if it had been entered into by himself.
- (2) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.