



Law of Property Act 1922

1922 CHAPTER 16

PART VIII

AMENDMENT OF THE LAW OF INTESTACY.

As to Real and Personal Estate.

147 Trust for sale and provisions as to administration.

- (1) On the death, after the commencement of this Act, of a person intestate as to any real or personal estate, the same shall be held by his personal representatives, as to the real estate upon trust to sell the same and as to the personal estate upon trust to call in, sell, and convert into money such part thereof as may not consist of money, with power to postpone such sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the personal representatives see special reason for sale; and s6 also that, unless required (for want of other assets) for purposes of administration, personal chattels be not sold except for special reason.
- (2) The income of the real and personal estate, including the net rents and profits of the real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs, and other outgoings properly attributable to income may, however invested (but without prejudice to the rights of any creditor of the deceased), as from the death of the deceased be treated and applied as income, but this provision shall not affect the right of the personal representatives to accumulate surplus income during a minority.
- (3) Out of the net money to arise from the sale and conversion of the real and personal estate (after payment of costs), and out of the ready money of the deceased, the personal representative shall (so far as the same may not be discharged under the provisions of the will, if any, of the deceased), pay the funeral expenses and debts of the deceased (but without prejudice to the provisions of the Real Estate Charges Acts, 1854, 1867, and 1877) and the costs, charges, and expenses of and incidental to the administration of the real and personal estate, including the death duties payable in respect of the same by reason of the death of the deceased in accordance with the rules

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relating to the administration of assets applicable to the case. In the case of an insolvent estate the income accruing after the death of the intestate shall also be applicable for the purposes of this subsection.

- (4) During a minority or the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the -said money, or so much thereof as may not have been distributed in any investments for the time being authorised by statute for the investment of trust money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.
- (5) The residue of the said money and any investments for the time being representing the same, including any part of the estate of the deceased which may be retained unsold and is not required for purposes of administration, is, in this Part of the Act, referred to as " the residuary estate of the intestate," which expression, where the intestate leaves a husband or wife means, in reference to any other persons taking under the intestacy, the residuary estate other than the personal chattels and subject to the sum of one thousand pounds and interest hereinafter charged in favour of such husband or wife.
- (6) Nothing in this section affects the rights of any creditor of the deceased or the rights of the Crown in respect of death duties, and where the deceased leaves a will, this section shall have effect subject to the provisions therein contained.

148 Abolition of descent to heir, curtesy dower, and escheat.

With regard to the real estate or personal inheritance of every person dying after the commencement of this Act, there shall be abolished—

- (a) All existing modes, rules, and canons of descent, and of devolution by special occupancy, or otherwise, of real estate, or of a personal inheritance, whether operating by the general law or by the custom of any county, locality, or manor, or otherwise howsoever; and
- (b) Tenancy by the curtesy and every other estate and interest of a husband in real estate as to which his wife dies intestate, whether arising under the general law or by custom or otherwise; and
- (c) Dower and free bench and every other estate and interest of a wife in real estate as to which her husband dies intestate, whether, arising under the general law or by custom or otherwise; provided that where a right to freebench has attached before the commencement of this Act which cannot be barred by a testamentary or other disposition made by the husband, then such right shall, unless released, remain in force in equity; and
- (d) Escheat to the Crown or the Duchy of Lancaster or the Duke of Cornwall or to a mesne lord for want of heirs.

149 Statutory trusts in favour of issue of the intestate or a class of persons.

- (1) Where under this Part of this Act the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, then the same shall be held upon the following trusts, namely :—
 - (i) In trust in equal shares (if more than one) for all or any the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under that age of any child of the intestate, who predeceases the intestate, leaving

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- issue living at the death of the intestate, such issue to take through all degrees, according to their stocks in equal shares (if more than one) the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;
- (ii) The statutory power of advancement, and the provisions of this Act which relate to maintenance and accumulation of surplus income, shall apply during a minority, but when an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest :
- (iii) Where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, shall have been paid to such child by the intestate or settled by the intestate on such marriage (including property covenanted to be paid or settled) or shall have been provided for such child by the will, if any, of the intestate, shall (subject to any contrary intention expressed or appearing from the circumstances of the case) be taken as being so paid, settled, or provided in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value of capital when practicable to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives; and the value of a life or less interest shall (subject as aforesaid) be liable to be brought into account under this subsection :
- (iv) The personal representatives may permit any infant contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss:
- (2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining a vested interest, then and in such case the residuary estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as shall not have been paid or applied under any power affecting the same, shall go, devolve and be held under the provisions of this Part of this Act as if the intestate had died without leaving issue living at the death of the intestate, and references in this Part of this Act to the intestate—
- (a) " leaving no issue " shall be construed as " leaving no issue who attain a vested interest ";
- (b) " leaving issue " or " leaving a child or other issue " shall be construed as " leaving issue who attain a vested interest. "
- (3) Where under this Part of this Act the residuary estate of an intestate is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, then the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts (other than as aforesaid) were repeated With the substitution of references to the members of that class or any of them for the children or child of the intestate.

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150 Succession to real and personal estate on intestacy.

- (1) The residuary estate of every person who dies intestate after the commencement of this Act shall be distributed in the manner or be held on the trusts mentioned in this section, namely :—
- (i) If the intestate leaves a husband or wife (with or without issue) the surviving husband or wife shall take the personal chattels absolutely, and in addition the residuary estate of the intestate (other than the personal chattels) shall stand charged with the payment of a net sum of one thousand pounds, free of death duties and costs, to the surviving husband or wife with interest thereon from the date of the death at the rate of five pounds per cent. per annum until paid or appropriated; and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held:
 - (a) If the intestate leaves no issue, upon trust for the surviving husband or wife during his or her life;
 - (b) If the intestate leaves issue, upon trust, as to one half or the property appropriated in respect of the same, for the surviving husband or wife during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate; and, as to the other half or the property appropriated in respect of the same, on the statutory trusts for the issue of the intestate; but if those trusts fail or determine in the lifetime of a surviving husband or wife of the intestate, then upon trust for the surviving husband or wife during the residue of his or her life ;
 - (ii) The personal representative or representatives may, either with the consent of any such tenant for life, not being also the sole personal representative or otherwise with the leave of the court, purchase or redeem the life estate (while it is in possession) by paying the capital value thereof (reckoned according to tables selected by the personal representative) to the tenant for life or the persons deriving title under him and the costs of the transaction, and thereupon the residuary estate of the intestate may be dealt with or distributed free from such life estate:
 - (iii) If the intestate leaves issue but no husband or wife, then the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate:
 - (iv) If the intestate leaves both parents but no issue, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall belong to the father and mother in equal shares absolutely:
 - (v) If the intestate leaves one parent only but no issue, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall belong to the surviving father or mother absolutely:
 - (vi) If the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:—
 - First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolute interest under such trusts; then
 - Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolute interest under such trusts; then

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Thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if no member of this class takes an absolute interest; then

Fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolute interest under such trusts; then

Fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate); but if no person takes an absolute interest under such trusts; then

Sixthly, for the surviving husband or wife of the intestate absolutely.

- (vii) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being (as the case may be) as bona vacantia, and in lieu of any right to escheat, and this Part of this Act shall bind the Crown, the said Duchy and the said Duke so far as necessary to give effect to the provisions thereof, but not so as to affect the time within which proceedings for the recovery of land or other property devolving on the Crown or the said Duchy or Duke may be instituted. The Crown, the said Duchy or Duke may, out of the whole or any part of the property devolving on them, provide for dependents, whether kindred or not, of the intestate, and other persons for whom it may be considered that the intestate ought to have made provision.
- (2) Provided that under the foregoing provisions of this section a husband and wife shall for all purposes of distribution or division be treated as two persons.
- (3) Section twenty-five of the Statute of Frauds the Statutes of Distribution and the Intestates' Estates Act, 1890, are hereby repealed as regards England and Wales, and—
- (a) references to the Statutes of Distribution in an instrument inter vivos made or in a will coming into operation after the commencement of this Act, shall be construed as references to this Part of this Act;
 - (b) where a testator dies after the commencement of this Act, the executor shall (subject to his rights and powers for the purposes of administration) be a trustee for the persons entitled under this part of this Act, in respect of any residue not expressly disposed of, unless it appears by the will that the executor is intended to take such residue beneficially;
 - (c) trusts declared in an instrument inter vivos made or in a will coming into operation before the commencement of this Act, by reference to the Statutes of Distribution, shall, unless the contrary thereby appears, be construed as referring to the Statutes so repealed.
- (4) Where the intestate leaves a will effectually disposing of part of his property, this section shall take effect subject to the provisions therein contained, and (save as provided by this Part of this Act in regard to the issue of the intestate) no beneficial interest acquired under the will shall be liable to be brought into account.
- (5) The personal representatives may raise—
- (a) the net sum of one thousand pounds or any part thereof and the interest thereon payable to the surviving husband or wife of the intestate on the security of the whole or any part of the residuary estate of the intestate (other than the personal chattels), so far as that estate may be sufficient for the purpose or the said sum and interest shall not have been satisfied by an appropriation under the statutory power available in that behalf; and

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- (b) in like manner the capital sum (if any) required for the purchase or redemption of the life estate of the surviving husband or wife of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate, and the amount (if any) properly required for the payment of the costs of the transaction.
- (6) If there is only one personal representative (not being a trust corporation) then, during any minority or the subsistence of a life interest, any person interested or the guardian, committee or receiver of any such person may apply to the court under the Trustee Act, 1893 (as amended by any subsequent enactment) for the appointment of new trustees either in addition to or in place of the personal representative.

151 Heirs taking by purchase.

Nothing in this Part of this Act shall affect the right in equity of any person to take, by purchase, as heir either general or special.

152 Wills in contemplation of marriage.

A will expressed to be made in contemplation of a marriage shall, notwithstanding anything in section eighteen of the Wills Act, 1837, or any other statutory provision or rule of law to the contrary, not be revoked by the solemnisation of the marriage contemplated.

Miscellaneous Provisions.

153 Death duties not affected.

Nothing in this Part of this Act shall render real estate liable to legacy duty or exempt it from succession duty.

154 Construction and as to a lunatic's and an infant's real estate.

- (1) In this Part of this Act—
- (i) " Real and personal estate " mean and include every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate which (otherwise than in right of a power of appointment or of the testamentary power conferred by this Act to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will;
 - (ii) " Real estate " where the context admits includes chattels real;
 - (iii) " Intestate " includes a person who leaves a will, but dies intestate as to some beneficial interest in his real or personal estate;
 - (iv) " Personal chattels " mean carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden live and dead stock and effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, wines, liquors and consumable stores, but do not include any chattels acquired for business purposes nor money or securities for money.

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- (2) The foregoing provisions of this Part of this Act shall not apply to any beneficial interest in real estate (not including chattels real) to which a lunatic (whether so found or not) or defective living and of full age at the commencement of this Act, and unable, by reason of his incapacity, to make a will, who thereafter dies intestate without having recovered his testamentary capacity, was entitled at his death; and such beneficial interest (not being an interest ceasing on his death) shall, without prejudice to any will of the deceased, devolve in accordance with the law in force before the commencement of this Act applicable to freehold land.
- (3) Where an infant dies after the commencement of this Act without having been married, and independently of this subsection he would, at his death, have been equitably entitled under a settlement (including a will or an intestacy) to an estate in fee simple or absolute interest in freehold land, or in any property settled to devolve therewith or as freehold land, such infant shall be deemed to have had an estate tail or entailed interest, and the settlement shall be construed accordingly