



TRICESIMO OCTAVO

VICTORIÆ REGINÆ.

No. LXXXIV.

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ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Application of this Act.</li> <li>3. On death, land to pass to personal representative.</li> <li>4. Title of personal representative to relate back.</li> <li>5. Letters of administration, &amp;c., to be conclusive evidence.</li> <li>6. Personal representative to sell.</li> <li>7. Sale to be by public auction or private contract.</li> <li>8. Vendor to convey.</li> <li>9. Money realized to be personal estate.</li> <li>10. Persons entitled to proceeds may require conveyance of land.</li> </ol> | <ol style="list-style-type: none"> <li>11. Persons entitled under will may require conveyance.</li> <li>12. Personal representative may apply to Supreme Court for directions.</li> <li>13. Court to make order regulating sales, &amp;c., in certain cases.</li> <li>14. Partition may be ordered.</li> <li>15. Trustee may relinquish trust in certain cases.</li> <li>16. Bond to be given by personal representative.</li> <li>17. Personal representative acting <i>bonâ fide</i> protected.</li> <li>18. Construction of word "heirs."</li> <li>19. Court to make rules.</li> <li>20. Interpretation.</li> <li>21. Commencement of Act.</li> </ol> |
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AN Act to provide for the more equitable Disposal in certain cases of the Real Estate of Persons dying Intestate. Title.

*[Reserved for the signification of Her Majesty's pleasure.]*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act shall be "The Real Estate Descent Act, 1874." Short Title.
2. This Act shall apply to every male person dying after this Act comes into operation, leaving him surviving a wife or child or children or any lineal descendant. Application of this Act.
3. All land in New Zealand of which any person to whom this Act applies shall die seized or possessed as owner without devising the same, or which he shall only partially devise, shall, with all powers privileges and rights of action attaching or relating thereto, go and 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 land and the unapplied proceeds thereof for division or distribution in like manner as is now the case with chattel real property, and such land 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: On death land to pass to personal representative.

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Provided that mortgages trusts and equities upon or affecting such lands shall be as valid as if the said lands had descended to the heir-at-law.

Title of personal representative to relate back.

4. Immediately upon letters of administration, or in the case of a partial devise, or the deceased owner leaving a will only affecting personal estate, upon probate of such will or letters of administration with such will annexed being granted, the estate of the deceased person in all his undevise or partially devised land shall vest in the person to whom such letters of administration or probate shall be granted if undevise absolutely, or if partially devised 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 probate or letters of administration, as the case may be.

Letters of administration &c. to be conclusive evidence.

5. 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 seized as owner, except as in such letters of administration or probate respectively may be limited or expressed.

Personal representative to sell.

6. Subject as hereinafter enacted, it shall be the duty of the person to whom such letters of administration or probate as the case may be shall have been granted as aforesaid, with all convenient speed after such land shall have become vested in him as aforesaid, to sell and dispose of the same; subject nevertheless, in the case of probate or letters of administration with will annexed, to any estate or interest therein created by partial devise (if any), so as to convert the same into money.

Sale to be by public auction or private contract.

7. Such land may be sold either altogether or in parcels, and either by public auction or private contract, and subject to such conditions as the vendor acting in such sale shall think fit; and the vendor may buy in and rescind any contract for sale without being responsible for any involuntary loss occasioned thereby.

Vendor to convey.

8. The vendor, acting as aforesaid, may execute and do all such conveyances assurances and acts for effectuating any sale made under the provisions of this Act as he shall think fit; and every such conveyance assurance and act duly made shall be effectual for conveying and assuring the land comprised therein.

Money realized to be personal estate.

9. After defraying all necessary expenses attending the conversion of such land into money as aforesaid, the balance of money arising therefrom shall be deemed to be part of the personal estate of the intestate, and shall be applied and dealt with accordingly in due course of administration.

Persons entitled to proceeds may require conveyance of land.

10. Notwithstanding anything herein contained, any person who after the sale of any land as aforesaid would have been entitled to receive the entire proceeds arising from the same in due course of administration if the land had been sold, shall be entitled, at his own expense in all things, to a conveyance of the said land at any time whilst the same shall remain unsold, subject nevertheless to any partial devise or other estate or interest then affecting the same in the hands of the person to whom such letters of administration or probate respectively as aforesaid shall have been granted; and it shall be the duty of such last-mentioned person, upon demand, to execute such conveyance accordingly.

Persons entitled under will may require conveyance.

11. 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

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interest in lands 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.

12. It shall be lawful for the personal representative, acting under any probate or letters of administration as the case may be, in either of the cases mentioned in the last two preceding sections, in lieu of making any such conveyance as therein respectively mentioned, to apply to the Supreme Court upon petition, and after such previous notice as shall be prescribed in that behalf by the rules of the said Court, to order and direct the course of proceeding to be adopted by the personal representative in regard to the same; and thereupon the said Court may make such order therein as it shall think fit.

Personal representative may apply to Supreme Court for directions.

13. The Supreme Court may from time to time, upon the petition of the personal representative aforesaid, or of 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 terms 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 or 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.

Court to make order regulating sales, &c., in certain cases.

14. 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 directions 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 accordingly.

Partition may be ordered.

15. 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 to the Public Trustee, or to any other person as the Court shall appoint.

Trustee may relinquish trust in certain cases.

16. 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: Provided that in case of an administrator one bond shall be sufficient as to both real and personal property.

Bond to be given by personal representative.

17. No personal representative acting under the provisions of this Act, who shall make any payment or do 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:

Personal representative acting *bonâ fide* protected.

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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 of whom such payments 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.

Construction of  
word "heirs."

**18.** In the reading and construction of all Acts of Parliament, and of 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 "heir" or "heirs," so far as relates to the deceased owners of undevise or partially devise 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 devise 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.

Court to make rules.

**19.** The said Court, or any two or more 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 to lands passing under this Act, and for prescribing the forms of probates or letters of administration when the same are intended to affect 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 all such rules of practice and procedure, and all other rules and regulations 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.

Interpretation.

**20.** In the construction of this Act, the words following shall have the meanings hereby assigned to them, unless the context shall be inconsistent with such meaning, that is to say,—

"Lands" shall mean and include messuages lands tenements rents and hereditaments, and whether corporeal or incorporeal; and any share estate or interest in them or any of them, whether the same shall be freehold or chattel interest; and any possibility right or title of entry or action, and whether the same shall be in possession reversion remainder or contingency.

"Owner" shall mean any person to whom this Act applies, seized 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.

**21.** This Act shall come into operation from a day to be fixed by the Governor by Proclamation in the *Government Gazette*, and such day to be not less than three months from the day upon which notice of Her Majesty's approval of the same shall be published in the said *Gazette*.