

SUCCESSION ACT OF 1867⁽¹⁾ (QUEENSLAND, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF PAPUA.

An Act to consolidate and amend the Laws relating to Dower Inheritance Succession Wills Powers Uses and Remedies against Realty.

* * * * *

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows:—

Preamble repealed by No. 3 of 1914, s. 2 and First Schedule.

Interpretation.

1. That the words and expressions hereinafter mentioned which in their ordinary signification have a more confined or a different meaning shall in this Act except where the nature of the provision or the context of the Act shall exclude such construction be interpreted as follows (that is to say)

Meaning of words in the Act.

the word "land" shall extend to messuages and all other hereditaments whether corporeal or incorporeal and whether freehold or of any other tenure and whether descendible according to the common law or according to any other law or custom and to money to be laid

"Land."

(1) The *Succession Act of 1867* of Queensland in its application to the Territory of Papua comprises the original *Succession Act of 1867* of Queensland referred to in Part I of the following Table, as amended by the Ordinance of the Territory of Papua referred to in Part II of the following Table:—

TABLE.
PART I.—ACT OF THE STATE OF QUEENSLAND.

Citation of Act.	Ordinance by which adopted.	Date on which adoption took effect.
<i>Succession Act of 1867</i> (31 Vic. No. 24) ^(a)	<i>The Courts and Laws Adopting Ordinance (Amended) of 1889</i> (No. 6 of 1889)	23.11.1889 (Supplement to British N.G. Govt. Gaz. of 23.11.1889)

(a) Continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*.

PART II.—ORDINANCE OF THE LEGISLATIVE COUNCIL
FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of reservation by Lieut.-Gov.	Date on which assent of Gov.-Gen. in Council notified in Papua Govt. Gaz.	Date on which came into operation.
<i>Ordinances Revision Ordinance, 1913</i> (No. 3 of 1914)	14.8.1913	4.2.1914	4.2.1914 (<i>Papua Govt. Gaz.</i> of 4.2.1914)

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out in the purchase of land and to chattels and other personal property transmissible to heirs and also to any share of the same hereditaments and properties or any of them and to any estate of inheritance or estate for any life or lives or other estate transmissible to heirs and to any possibility right or title of entry or action and any other interest capable of being inherited and whether the same estates possibilities rights titles and interests or any of them shall be in possession reversion remainder or contingency

“The purchaser.”

and the words “the purchaser” shall mean the person who last acquired the land otherwise than by descent or than by any escheat partition or inclosure by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent

“Descent.”

and the word “descent” shall mean the title to inherit land by reason of consanguinity as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue

“Descendants.”

and the expression “descendants” of any ancestor shall extend to all persons who must trace their descent through such ancestor

“Person last entitled.”

and the expression “the person last entitled to land” shall extend to the last person who had a right thereto whether he did or did not obtain the possession or the receipt of the rents and profits thereof

“Assurance.”
Imp. 7 Wm. IV.
& 1 Vic. c. 26
s. 1.

and the word “assurance” shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity

“Will.”

and the word “will” shall extend to a testament and to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power and also to a disposition by will and testament or devise of the custody and tuition of any child and to any other testamentary disposition

“Real estate.”

and the words “real estate” shall extend to messuages lands rents and hereditaments whether freehold or of any other tenure and whether corporeal incorporeal or personal and to any undivided share thereof and to any estate right or interest (other than a chattel interest) therein

“Personal estate.”

and the words “personal estate” shall extend to leasehold estates and other chattels real and also to moneys

Succession Act of 1867 (Queensland, adopted).

shares of Government and other funds securities for money (not being real estates) debts choses in action rights credits goods and all other property whatsoever which by law devolves upon the executor or administrator and to any share or interest therein

Provided that in the fifteen⁽²⁾ sections next hereupon following the word "land" shall not extend to such hereditaments as are not now liable to dower nor any land which by any Act heretofore passed may have been exempted from dower.

Imp. 3 & 4 Wm. IV. c. 105 s. 1.

Right to Dower or Provision.

2. When a husband shall have been entitled to a right of entry or action in any land and his widow would be entitled to dower out of the same if he had recovered possession thereof she shall be entitled to dower out of the same although her husband shall not have recovered possession thereof:

Seisin shall not be necessary to give title to dower.
Imp. *Ib.* s. 3.

Provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.⁽³⁾

3. When a husband shall die beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law and such interest whether wholly equitable or partly legal and partly equitable shall be an estate of inheritance in possession or equal to an estate of inheritance in possession (other than an estate in joint-tenancy) then his widow shall be entitled in equity to dower out of the same land.⁽³⁾

Widows to be entitled to dower out of equitable estates.
Imp. *Ib.* s. 2.

4. No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate or of or out of any of his land not liable to dower shall defeat or prejudice her right to dower unless a contrary intention shall be declared by his will.⁽³⁾

Bequest of personal estate to widow shall not bar her dower.
Imp. *Ib.* s. 10.

5. Provided always that nothing in this Act contained shall prevent any court of equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them.⁽³⁾

Agreement not to bar dower may be enforced.
Imp. *Ib.* s. 11.

6. Nothing in this Act contained shall interfere with any rule of equity or of ecclesiastical law by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.⁽³⁾

Legacies in bar of dower still entitled to preference.
Imp. *Ib.* s. 12.

Restrictions on the Right.

7. No widow shall hereafter be entitled to dower *ad ostium ecclesiæ* or dower *ex assensu patris*.⁽³⁾

Certain dowers abolished.
Imp. *Ib.* s. 13.

(2) The word "fifteen" appeared in the original Act. It was altered to "fourteen" by 3 Edw. VII., No. 10 (Section 10), but this Act has not been adopted as a law of the Territory of Papua.

(3) See, however, Section 22 of the *Probate and Administration Ordinance, 1913-1940.*

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Residence of wife in the colony or knowledge of her existence at time of sale required.

8. No claim to dower on the part of the widow of any deceased owner of land shall have any force at law or in equity against any person claiming by purchase from such owner for valuable consideration unless it shall be proved that the claimant resided in Queensland with and as the wife of such deceased owner before his sale of the land or that the purchaser had notice before or at the time of sale of the fact of the deceased owner having been married to the claimant and in case the defendant resisting such claim shall derive title through the original purchaser from such deceased owner it shall not be sufficient to prove such knowledge on the part of the original purchaser without also showing that before the defendant purchased the land either the claimant had resided with her husband in the said colony or the defendant had become acquainted with the said fact of marriage.⁽³⁾

Claim to dower limited.

9. The claim to dower out of any land by the widow of any person who has or shall have alienated such land for valuable consideration shall be limited to one-third of the estimated rent for the time being of such land considered as if remaining in the state of improvement in which the same shall have been at the time of such alienation and shall not be recoverable by metes and bounds but shall be assignable by a court of equity only with liberty nevertheless to such court to direct the trial at law of any issue of fact on which the assessment of the claim shall depend.⁽³⁾

No dower out of estate disposed of.
Imp. 3 & 4 Wm. IV. c. 105.

10. No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime or by his will.⁽³⁾

Dower may be barred by a declaration in a deed.
Imp. 1b. s. 6.

11. A widow shall not be entitled to dower out of any land of her husband when in the deed by which such land was conveyed to him or by any deed executed by him it shall be declared that his widow shall not be entitled to dower out of such land.⁽³⁾

Or by a declaration in the husband's will.
Imp. 1b. s. 7.

12. A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband duly executed for the devise of freehold estates he shall declare his intention that she shall not be entitled to dower out of such land or out of any of his land.⁽³⁾

Dower shall be subject to restrictions.
Imp. 1b. s. 8.

13. The right of a widow to dower shall be subject to any conditions restrictions or directions which shall be declared by the will of her husband duly executed as aforesaid.⁽³⁾

(3) See, however, Section 22 of the *Probate and Administration Ordinance*, 1913-1940.

Succession Act of 1867 (Queensland, adopted).

14. Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised or any estate or interest therein to or for the benefit of his widow such widow shall not be entitled to dower out of or in any land of her said husband unless a contrary intention shall be declared by his will.⁽³⁾

Devise of real estate to the widow shall bar her dower.
Imp. 3 & 4 Wm. IV. c. 105 s. 9.

15. All partial estates and interests and all charges created by any disposition or will of a husband and all debts encumbrances contracts and engagements to which his land shall be subject or liable shall be valid and effectual as against the right of his widow to dower.⁽³⁾

Priority to partial estates charges and specialty debts.
Imp. 1b. s. 5.

Descent to be traced from the Purchaser.

16. In every case descent shall be traced from the purchaser and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require the person last entitled to the land shall for the purposes of this Act be considered to have been the purchaser thereof unless it shall be proved that he inherited the same in which case the person from whom he inherited the same shall be considered to have been the purchaser unless it shall be proved that he inherited the same and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser unless it shall be proved that he inherited the same.⁽⁴⁾

Descent shall always be traced from the purchaser but the last owner shall be considered to be the purchaser unless the contrary be proved.
Imp. 1b. s. 2.

17. When any land shall have been devised by any testator to the heir or to the person who shall be the heir of such testator such heir shall be considered to have acquired the land as a devisee and not by descent and when any land shall have been limited by any assurance to the person or to the heirs of the person who shall thereby have conveyed the same land such person shall be considered to have acquired the same as a purchaser by virtue of such assurance and shall not be considered to be entitled thereto as his former estate or part thereof.⁽⁴⁾

Heir entitled under a will shall take as devisee and a limitation to the grantor or his heirs shall create an estate by purchase.
Imp. 1b. s. 3.

18. When any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors contained in any assurance or under a limitation to the heirs or to the heirs of the body of any of his ancestors or under any limitation having the same effect contained in a will of any testator then and in any of such cases such land shall

Where heirs take by purchase under limitations to the heirs of their ancestor the land shall descend as if the ancestor had been the purchaser.
Imp. 1b. s. 4.

(3) See, however, Section 22 of the *Probate and Administration Ordinance* 1913-1940.

(4) See, however, Section 19 of the *Probate and Administration Ordinance*, 1913-1940.

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descend and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land.⁽⁴⁾

Descent to be Lineally Traced.

Brothers &c.
shall trace
descent through
their parent.

Imp. 3 & 4 Wm.
IV. c. 106 s. 5.

19. No brother or sister shall be considered to inherit immediately from his or her brother or sister but every descent from a brother or sister shall be traced through the parent.⁽⁴⁾

Lineal ancestor
may be heir in
preference to
collateral person
claiming
through him.

Imp. *Ib.* s. 6.

20. Every lineal ancestor shall be capable of being heir to any of his issue and in every case where there shall be no issue of the purchaser his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit either by tracing his descent through such lineal ancestor or in consequence of there being no descendant of such lineal ancestor so that the father shall be preferred to a brother or sister and a more remote lineal ancestor to any of his issue other than a nearer lineal ancestor or his issue.⁽⁴⁾

Maternal Ancestors.

The male line to
be preferred.

Imp. *Ib.* s. 7.

21. None of the maternal ancestors of the person from whom the descent is to be traced nor any of their descendants shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed and also no female paternal ancestor of such person nor any of her descendants shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed and no female paternal⁽⁵⁾ ancestor of such person nor of any of her descendants shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.⁽⁴⁾

The mother of
more remote
male ancestor to
be preferred to
the mother of the
less remote
male ancestor.

Imp. *Ib.* s. 8.

22. Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced and their descendants the mother of his more remote male paternal ancestor or her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male paternal ancestor or her descendants and where there shall be a failure of male maternal ancestors of such person and their descendants the mother of his more remote male maternal ancestor and her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor and her descendants.⁽⁴⁾

(4) See, however, Section 19 of the *Probate and Administration Ordinance, 1913-1940.*

(5) The word "paternal" appeared in the original Act. It was altered to "maternal" by 8 Edw. VII, No. 18 (Section 5) but this Act has not been adopted as a law of the Territory of Papua.

The Half Blood.

23. Any person related to the person from whom the descent is to be traced by the half blood shall be capable of being his heir and the place in which any such relation by the half blood shall stand in the order of inheritance so as to be entitled to inherit shall be next after any relation in the same degree of the whole blood and his issue where the common ancestor shall be a male and next after the common ancestor where such common ancestor shall be a female so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue and the brother of the half blood on the part of the mother shall inherit next after the mother.⁽⁴⁾

Half blood if on the part of a male ancestor to inherit after the whole blood of the same degree if on the part of a female ancestor after her.

Imp. 3 & 4 Wm. IV. c. 106 s. 9.

Escheat and Forfeiture.

24. When the person from whom the descent of any land is to be traced shall have had any relation who having been attainted shall have died before such descent shall have taken place then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted.⁽⁴⁾

After the death of a person attainted his descendants may inherit.

Imp. 1b. s. 10.

25. No lands stock or chose in action vested in any person upon any trust or by way of mortgage or any profits thereof shall escheat or be forfeited to Her Majesty by reason of the attainder or conviction for any offence of such trustee or mortgagee but shall remain in such trustee or mortgagee or survive to his or her co-trustee or descend or vest in his or her representative as if no such attainder or conviction had taken place.

No escheat of property held upon trust or mortgage.

26. Nothing contained in this Act shall prevent the escheat or forfeiture of any lands or personal estate vested in any such trustee or mortgagee⁽⁶⁾ so far as relates to any beneficial interest therein of any such trustee or mortgagee but such lands or personal estate so far as relates to any such beneficial interest shall be recoverable in the same manner as if this Act had not passed.

Act not to prevent escheat or forfeiture of beneficial interest.

Failure of Heirs.

27. When there shall be a total failure of heirs of the purchaser or where any land shall be descendible as if an ancestor had been the purchaser thereof and there shall be a total failure of the heirs of such ancestor then and in every such case the land shall descend and the descent shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof.⁽⁴⁾

Descent how to be traced.
Imp. 22 & 23 Vic. c. 35 s. 19.

(4) See, however, Section 19 of the *Probate and Administration Ordinance*, 1913-1940.

(6) The word "mortgage" appeared in the original Act. It was altered to "mortgagee" by 3 Edw. VII, No. 10 (Section 10), but this Act has not been adopted as a law of the Territory of Papua.

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Estates pur autre Vie.

Estates *pur autre vie*.

Imp. 7 Wm. IV. & 1 Vic. c. 26 s. 6.

See Imp. 54 Geo. III. c. 15 s. 4.

28. If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature the same shall be chargeable in the hands of the heir if it shall come to him by reason of special occupancy as assets by descent as in the case of freehold land in fee-simple and in case there shall be no special occupant of any estate *pur autre vie* whether freehold or of any other tenure and whether a corporeal or incorporeal hereditament it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act it shall be assets in his hands and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Statute of Distributions.

How and to whom the surplusage is to be distributed.

Imp. 22 & 23 Car. 2 c. 10 s. 5.

One-third to wife and residue amongst the children.

29. The Supreme Court and every person who by any Act is enabled to make distribution of the surplusage of the estate of any person dying intestate shall distribute the whole surplusage of such estate or estates in manner and form following (that is to say) one-third part of the said surplusage to the wife of the intestate and all the residue by equal portions to and amongst the children of such persons dying intestate and such persons as legally represent such children in case any of the said children be then dead other than such child or children (not being heir at law) who shall have any estate by the settlement of the intestate or shall be advanced by the intestate in his lifetime by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made and in case any child other than the heir at law who shall have any estate by settlement from the said intestate or shall be advanced by the said intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid then so much of the surplusage of the estate of such intestate to be distributed to such child or children as shall have any land by settlement from the intestate or were advanced in the lifetime of the intestate as shall make the estate of all the said children to be equal as near as can be estimated

Advancement by portion.

Heir at law to have an equal part.

But the heir at law notwithstanding any land that he shall have by descent or otherwise from the intestate is to have an equal part in the distribution with the rest of the children without any consideration of the value of the land which he hath by descent or otherwise from the intestate.⁽⁷⁾

(7) See, also, *The Succession Act Declaratory Act of 1884* (Queensland, adopted) and Section 20 of the *Probate and Administration Ordinance, 1913-1940*.

Succession Act of 1867 (Queensland, adopted).

30. And in case there be no children nor any legal representatives of them then one moiety of the said estate to be allotted to the wife of the intestate the residue of the said estate to be distributed equally to every of the next of kindred of the intestate who are in equal degree and those who legally represent them.⁽⁷⁾

If no children then one moiety to wife and residue to next of kin.
Imp. 22 & 23 Car. 2 c. 10 s. 6.

31. Provided that there be no representations admitted among collaterals after brothers' and sisters' children.

If no wife then to be distributed amongst the children.

And in case there be no wife then all the said estate to be distributed equally to and amongst the children and in case there be no child then to the next of kindred in equal degree of or unto the intestate and their legal representatives as aforesaid and in no other manner whatsoever.⁽⁷⁾

Imp. 1b. s. 7.

32. Provided also to the end that a due regard be had to creditors that no such distribution of the goods of any person dying intestate be made till after one year be fully expired after the intestate's death and that such and every one to whom any distribution and share shall be allotted shall give bond with sufficient sureties in the Supreme Court that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered or otherwise duly made to appear that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that debt or debts and of the costs of suit and charges of the administrator by reason of such debt out of the part and share so as aforesaid allotted to him or her thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.⁽⁸⁾

No distribution till after one year.

Imp. 1b. s. 8.

If debts afterwards appear then all to refund proportionally.

33. Provided also that in all cases where the Supreme Court hath used heretofore to grant administration *cum testamento annexo* it shall continue so to do and the will of the deceased in such testament expressed shall be performed and observed.

This Act shall not extend to administration *cum testamento annexo*.

Imp. 1b. s. 9.

34. When any person shall die having by his or her will or any codicil or codicils thereto appointed any person or persons to be his or her executor or executors such executor or executors shall be deemed by courts of equity to be a trustee or trustees for the person or persons (if any) who would be entitled to the estate under the statute of distributions in respect of any residue not expressly disposed of unless it shall appear by the will or any

Executors deemed to be trustees for persons entitled to any residue under the statute of distributions unless otherwise directed by will.

Imp. 11 Geo. IV. & 1 Wm. IV. c. 40 s. 1.

(7) See, also, *The Succession Act Declaratory Act of 1884* (Queensland, adopted) and Section 20 of the *Probate and Administration Ordinance, 1913-1940*.

(8) See, also, the *Probate and Administration Ordinance, 1913-1940*, particularly Sections 57-64.

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codicil thereto the person or persons so appointed executor or executors was or were intended to take such residue beneficially.

Not to affect rights of executors where there is no person entitled to the residue.

Imp. 11 Geo. IV. & 1 Wm. IV. c. 40 s. 2.

35. Provided that nothing in the section last preceding contained shall affect or prejudice any right to which any executor if this Act had not been passed would have been entitled in cases where there is not any person who would be entitled to the testator's estate under the present or any statute of distributions in respect of any residue not expressly disposed of.

Wills.

All property may be disposed of by will comprising freeholds also such of them as cannot now be devised.

Estates *pur autre vie*.

Contingent interests.

Rights of entry and property required after execution of the will.

Imp. 7 Wm. IV. & 1 Vic. c. 26 s. 3.

36. It shall be lawful for every person to devise bequeath or dispose of by his will executed in manner hereinafter required all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death and which if not so devised bequeathed or disposed of would devolve upon the heir-at-law of him or if he became entitled by descent of his ancestor or upon his executor or administrator and also all estates *pur autre vie* whether there shall or shall not be any special occupant thereof and whether the same shall be freehold or of any other tenure and whether the same shall be a corporeal or incorporeal hereditament and also all contingent executory or other future interests in any real or personal estate whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will and also all rights of entry for conditions broken and other rights of entry and also such of the same estates interests and rights respectively and other real and personal estate as the testator may be entitled to at the time of his death notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Competency of Testators.

No will of a minor valid.

Imp. *Ib.* s. 7.

37. No will made by any person under the age of twenty-one years shall be valid.

Nor of a *femme covert* except such as might now be made.

Imp. *Ib.* s. 8.

38. Provided also that no will made by any married woman shall be valid except such a will as might have been made by a married woman before the passing of this Act.⁽⁹⁾

(9) See, also, Section 52 of *The Intestacy Act of 1877* (Queensland, adopted) printed on p. 4355.

Execution and Attestation of Wills and Powers.

39. No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned and required (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time and such witnesses shall attest and shall subscribe the will in the presence of the testator but no form of attestation shall be necessary.

Every will to be in writing and signed by the testator in the presence of two witnesses. Imp. 7 Wm. IV. & 1 Vic. c. 26 s. 9.

40. Every such will shall so far only as regard the position of the signature of the testator or of the person signing for him as aforesaid be deemed to be valid if the signature shall be so placed at or after or following or under or beside or opposite to the end of the will that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will

When signature to a will shall be deemed valid. Imp. 15 & 16 Vic. c. 24.

and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation or shall follow or be after or under the clause of attestation either with or without a blank space intervening or shall follow or be after or under or beside the names or one of the names of the subscribing witnesses or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature

and the enumeration of the above circumstances shall not restrict the generality of the above enactment but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it nor shall it give effect to any disposition or direction inserted after the signature shall be made.

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Act to extend to certain wills already made.

41. The provisions of the section last preceding shall extend and be applied to every will already made where administration or probate has not already been granted or ordered in consequence of the defective execution of such will or where the property being other than personalty has not been possessed or enjoyed by some person claiming to be entitled thereto in consequence of the defective execution of such will or the right thereto shall not have been decided to be in some other person than the person claiming under the will in consequence of the defective execution of such will.

Appointments by will to be executed like other wills &c.
Imp. 7 Wm. IV. & 1 Vic. c. 26 s. 10.

42. No appointment made by will in exercise of any power shall be valid unless the same be executed in manner hereinbefore required and every will executed in manner hereinbefore required shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Soldiers' and mariners' wills excepted.
Imp. 1b. s. 11.

43. Provided always that any soldier being in actual military service or any mariner or seaman being at sea may dispose of his personal estate as he might have done before the making of this Act.

Act not to affect provisions of 11 Geo. IV. & 1 Wm. IV. c. 20 with respect to wills of petty officers &c.
Imp. 1b. s. 12.

44. This Act shall not prejudice or affect any of the provisions contained in an Act passed in the eleventh year of the reign of His Majesty King George the Fourth and the first year of the reign of His late Majesty King William the Fourth⁽¹⁰⁾ intituled "*An Act to Amend and Consolidate the Laws relating to the Pay of the Royal Navy*" respecting the wills of petty officers and seamen in the Royal Navy and non-commissioned officers of marines and marines so far as relates to their wages pay prize money bounty money and allowances or other moneys payable in respect of services in Her Majesty's Navy.

Publication.

Publication not to be requisite.
Imp. 1b. s. 13.

45. Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Competency of Attesting Witnesses.

Will not void by incompetency of witness.
Imp. 1b. s. 14.

46. If any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof such will shall not on that account be invalid.

(10) Act 11 Geo. IV. and 1 Wm. IV. c. 20 of the United Kingdom was repealed in the United Kingdom by 28 and 29 Vic. c. 112 and 29 and 30 Vic. c. 109.

47. If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise legacy estate interest gift or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made such devise legacy estate interest gift or appointment shall so far only as concerns such person attesting the execution of such will or the wife or husband of such person or any person claiming under such person or wife or husband be utterly null and void and such person so attesting shall be admitted as a witness to prove the execution of such will or to prove the validity or invalidity thereof notwithstanding such devise legacy estate interest gift or appointment mentioned in such will.

Gifts to an attesting witness to be void.
Imp. 7 Wm. IV. & 1 Vic. c. 26 s. 15.

48. In case by any will any real or personal estate shall be charged with any debt or debts and any creditor or the wife or husband of any creditor whose debt is so charged shall attest the execution of such will such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof.

Creditor attesting to be admitted a witness.
Imp. 1b. s. 16.

49. No person shall on account of his being an executor of a will be incompetent to be admitted a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

Executor to be admitted a witness.
Imp. 1b. s. 17.

Revocation and Alteration.

50. Every will made by a man or woman shall be revoked by his or her marriage except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir executor or administrator or the person entitled as his or her next of kin under any statute of distribution.

Will to be revoked by marriage.
Imp. 1b. s. 18.

51. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

No will to be revoked by presumption.
Imp. 1b. s. 19.

52. No will or codicil or any part thereof shall be revoked otherwise than as aforesaid or by another will or codicil executed in manner hereinbefore required or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed or by the burning tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

In what cases wills may be revoked.
Imp. 1b. s. 20.

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No alteration in a will shall have any effect unless executed as a will.

Imp. 7 Wm. IV. & 1 Vic. c. 26 s. 21.

53. No obliteration interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

Revival.

How revoked will shall be revived.

Imp. *Ib.* s. 22.

54. No will or codicil or any part thereof which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner hereinbefore required and showing an intention to revive the same and when any will or codicil which shall be partly revoked and afterwards wholly revoked shall be revived such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof unless an intention to the contrary shall be shown.

Construing of Wills.

When a devise not to be rendered inoperative &c.

Imp. *Ib.* s. 23.

55. No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised except an act by which such will shall be revoked as aforesaid shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

A will to speak from the death of the testator.

Imp. *Ib.* s. 24.

56. Every will shall be construed with reference to the real estate and personal estate comprised in it to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention shall appear by the will.

What a residuary devise shall include.

Imp. *Ib.* s. 25.

57. Unless a contrary intention shall appear by the will such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the lifetime of the testator or by reason of such devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in such will.

58. A devise of the land of the testator or of the land of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it shall be construed to include the leasehold estates of the testator or his leasehold estates or any of them to which such description shall extend (as the case may be) as well as freehold estates unless a contrary intention shall appear by the will.

What a general devise shall include.
Imp. 7 Wm. IV. & 1 Vic. c. 26 s. 26.

59. A general devise of the real estate of the testator or of the real estate of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner shall be construed to include any real estate or any real estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention shall appear by the will and in like manner a bequest of the personal estate of the testator or any bequest of personal property described in a general manner shall be construed to include any personal estate or any personal estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention shall appear by the will.

What a general gift shall include.
Imp. *Ib.* s. 27.

60. Where any real estate shall be devised to any person without any words of limitation such devise shall be construed to pass the fee-simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate unless a contrary intention shall appear by the will.

How a devise without words of limitation shall be construed.
Imp. *Ib.* s. 28.

61. In any devise or bequest of real or personal estate the words "die without issue" or "die without leaving issue" or "have no issue" or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death or an indefinite failure of his issue shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of his issue unless a contrary intention shall appear by the will by reason of such person having a prior estate tail or of a preceding gift being without any implication arising from such words a limitation of an estate tail to such person or issue or otherwise:

How the words "die without issue" "die without leaving issue" or "have no issue" shall be construed.
Imp. *Ib.* s. 29.

Provided that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift

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shall be born or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Trustees and Executors.

No devise to trustees or executors except &c., shall pass a chattel interest.
Imp. 7 Wm. IV. & 1 Vic.
c. 26 s. 30.

62. Where any real estate shall be devised to any trustee or executor such devise shall be construed to pass the fee-simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate unless a definite term of years absolute or determinable or an estate of freehold shall thereby be given to him expressly or by implication.

Trustees under an unlimited devise &c., to take the fee.
Imp. 1b. s. 31.

63. Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee and the beneficial interest in such real estate or in the surplus rents and profits thereof shall not be given to any person for life or such beneficial interest shall be given to any person for life but the purposes of the trust may continue beyond the life of such person such devise shall be construed to vest in such trustee the fee-simple or other the whole legal estate which the testator had power to dispose of by will in such real estate and not an estate determinable when the purposes of the trust shall be satisfied.

Lapse.

Devises of estates tail shall not lapse.
Imp. 1b. s. 32.

64. Where any person to whom any real estate shall be devised for an estate tail or an estate in *quasi* entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail and any such issue shall be living at the time of the death of the testator such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention shall appear by the will.

Gifts to children or other issue who leave issue living at the testator's death shall not lapse.
Imp. 1b. s. 33.

65. Where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue and any such issue of such person shall be living at the time of the death of the testator such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention shall appear by the will.

Powers.

66. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity:

Mode of execution of powers.
Imp. 22 & 23
Vic. c. 35 s. 12.

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution or that any act shall be performed in order to give validity to any appointment having no relation to the mode of executing and attesting the instrument and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed and to any such execution of a power this provision shall not extend.

67. Where under a power of sale a *bonâ fide* sale shall be made of an estate with the timber thereon or any other articles attached thereto and the tenant for life or any other party to the transaction shall by mistake be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles it shall be lawful for the Supreme Court upon any bill or application in a summary way as the case may require or permit to declare that upon payment by the purchaser or the claimant under him of the full value of the timber and articles at the time of sale with such interest thereon as the court shall direct and the settlement of the said principal moneys and interest under the direction of the court upon such parties as in the opinion of the court shall be entitled thereto the said sale ought to be established and upon such payment and settlement being made accordingly the court may declare that the said sale is valid and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

Sale under power not to be avoided by reason of mistaken payment to tenant for life.
Imp. 17. s. 13.

68. Where by any will which shall come into operation after the commencement of this Act the testator shall have charged his real estate or any specific portion thereof with the payments of his debts or with the payment of any legacy or other specific sum of money and shall have devised the estate so charged to any trustee

Devisee in trust may raise money by sale notwithstanding want of express power in the will.
Imp. 17. s. 14.

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or trustees for the whole of his estate or interest therein and shall not have made any express provision for the raising of such debt legacy or sum of money out of such estate it shall be lawful for the said devisee or devisees in trust notwithstanding any trusts actually declared by the testator to raise such debts legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof or by a mortgage of the same or partly in one mode and partly in the other and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

Powers given
by last section
extended to
survivors
devisees &c.
Imp. 22 & 23
Vic. c. 35
s. 15.

69. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship descent or devise or to any person or persons who may be appointed under any power in the will or by the court to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

Executors to
have power of
raising money
&c. when there
is no sufficient
devise.
Imp. *Ib.* s. 16.

70. If any testator who shall have created such a charge as is described in the section next but one preceding shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said monies as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested but any sale or mortgage under this Act shall operate only on the estate and interest whether legal or equitable of the testator and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Purchasers &c.
not bound to
inquire as to
powers.
Imp. *Ib.* s. 17.

71. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by the three sections last preceding of this Act or either of them shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Sections 69, 70,
and 71 not to
affect certain
sales &c., nor
to extend to
devisees in fee
or in tail.
Imp. *Ib.* s. 18.

72. The provisions contained in the said three sections shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the commencement of this Act but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed and the

Succession Act of 1867 (Queensland, adopted).

said several sections shall not extend to a devise to any person or persons in fee or in tail or for the testator's whole estate and interest charged with debts or legacies nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.

Uses.

73. Where by any instrument any hereditaments have been or shall be limited to uses all uses thereunder whether expressed or implied by law and whether immediate or future or contingent or executory or to be declared under any power therein contained shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seized to the uses and the continued existence in him or elsewhere of any seisin to uses or *scintilla juris* shall not be deemed necessary for the support of or to give effect to future or contingent or executory uses nor shall any such seisin to uses or *scintilla juris* be deemed to be suspended or to remain or to subsist in him or elsewhere.

Provision for cases of future and contingent uses.

Imp. 23 & 24 Vic. c. 38 s. 7.

74. This Act shall not extend to any will made before the first day of January one thousand eight hundred and forty and every will re-executed or re-published or revived by any codicil shall for the purposes of this Act be deemed to have been made at the time at which the same shall be so re-executed re-published or revived and this Act shall not extend to any estate *pur autre vie* of any person who shall have died before the first day of January one thousand eight hundred and forty.

To what wills and estates this Act shall not extend.

Imp. 7 Wm. IV. & 1 Vic. c. 26 s. 34.

Remedies of Creditors against Realty.

75. And whereas it is not reasonable or just that by the practice or contrivance of any debtors their creditors should be defrauded of their just debts and nevertheless it hath often so happened that where several persons having by bonds covenants or other specialties bound themselves and their heirs and have afterwards died seized in fee simple of and in messuages lands tenements and hereditaments or had power or authority to dispose of or charge the same by their wills or testaments have to the defrauding of such their creditors by their last wills or testaments devised the same or disposed thereof in such manner as such creditors have lost their said debts for remedying of which and for the maintenance of just and upright dealing be it therefore further enacted That all wills and testamentary limitations dispositions or appointments already made by persons now in being or hereafter

For remedying frauds committed on creditors by wills.

Imp. 11 Geo. IV. & 1 Wm. IV. c. 47 s. 2.

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to be made by any person or persons whomsoever of or concerning any messuages lands tenements or hereditaments or any rent profit term or charge out of the same whereof any person or persons at the time of his her or their decease shall be seized in fee simple in possession reversion or remainder or have power to dispose of the same by his her or their last wills or testaments shall be deemed or taken (only as against such person or persons bodies politic or corporate and his and their heirs successors executors administrators and assigns and every of them with whom the person or persons making any such wills or testaments limitations dispositions or appointments shall have entered into any bond covenant or other specialty binding his her or their heirs) to be fraudulent and clearly absolutely and utterly void frustrate and of none effect any pretence colour feigned or presumed consideration or any other matter or thing to the contrary notwithstanding.

Enabling
creditors to
recover upon
bonds &c.

Imp. 11 Geo. IV.
& 1 Wm. IV.
c. 47 s. 3.

76. And for the means that such creditors may be enabled to recover upon such bonds covenants and other specialties be it further enacted That in the cases before mentioned every such creditor shall and may have and maintain his her and their action and actions of debt or covenant upon the said bonds covenants and specialties against the heir and heirs at law of such obligor or obligors covenantor or covenantors and such devisee and devisees or the devisee or devisees of such firstmentioned devisee or devisees jointly by virtue of this Act and such devisee and devisees shall be liable and chargeable for a false plea by him or them pleaded in the same manner as any heir should have been for any false plea by him pleaded or for not confessing the lands or tenements to him descended.

If there is
no heir at
law actions
may be
maintained
against the
devisee.

Imp. 17. s. 4.

77. If in any case there shall not be any heir at law against whom jointly with the devisee or devisees a remedy is hereby given in every such case every creditor to whom by this Act relief is so given shall and may have and maintain his her and their action and actions of debt or covenant as the case may be against such devisee or devisees solely and such devisee or devisees shall be liable for false plea as aforesaid.

Not to affect
limitations for
just debts or
portions for
children.

Imp. 17. s. 5.

78. Provided that where there hath been or shall be any limitation or appointment devise or disposition of or concerning any messuages lands tenements or hereditaments for the raising or payment of any real and just debt or debts or any portion or portions sum or sums of money for any child or children of any person according to or in pursuance of any marriage contract or

agreement in writing *bona fide* made before such marriage the same and every of them shall be in full force and the same messuages lands tenements and hereditaments shall and may be holden and enjoyed by every such person or persons his her and their heirs executors administrators and assigns for whom the said limitation appointment devise or disposition was made and by his her and their trustee or trustees his her and their heirs executors administrators and assigns for such estate or interest as shall be so limited or appointed devised or disposed until such debt or debts portion or portions shall be raised paid and satisfied anything in this Act contained to the contrary notwithstanding.

79. In all cases where any heir at law shall be liable to pay the debts or perform the covenants of his ancestors in regard of any lands tenements or hereditaments descended to him and shall sell alien or make over the same before any action brought or process sued out against him such heir at law shall be answerable for such debt or debts or covenants in an action or actions of debt or covenant to the value of the said lands so by him sold aliened or made over in which cases all creditors shall be preferred as in actions against executors and administrators and such execution shall be taken out upon any judgment or judgments so obtained against such heir to the value of the said lands as if the same were his own proper debt or debts saving that the lands tenements and hereditaments *bona fide* aliened before the action brought shall not be liable to such execution.

Heir at law to be answerable for debts although he may sell estate before action brought. Imp. 11 Geo. IV. & 1 Wm. IV. c. 47 s. 6.

80. Provided that where any action of debt or covenant upon any specialty is brought against the heir he may plead *riens per descent* at the time of the original writ brought or the bill filed against him anything herein contained to the contrary notwithstanding and the plaintiff in such action may reply that he had lands tenements or hereditaments from his ancestors before the original writ brought or bill filed and if upon the issue joined thereupon it be found for the plaintiff the jury shall inquire of the value of the lands tenements or hereditaments so descended and thereupon judgment shall be given and execution shall be awarded as aforesaid but if judgment be given against such heir by confession of the action without confessing the assets descended or upon demurrer or *nihil dicit* it shall be for the debts and damage without any writ to inquire of the lands tenements or hereditaments so descended.

Where an action of debt is brought against the heir he may plead *riens per descent*. Imp. 1b. s. 7.

81. Provided that all and every the devisee and devisees made liable by this Act shall be liable and chargeable in the same manner as the heir at law by force of this Act notwithstanding the lands tenements and hereditaments to him or them devised shall be aliened before the action brought.

Devisees to be liable the same as heirs at law. Imp. 1b. s. 8.

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Traders' estates shall be assets to be administered in courts of equity.
Imp. 11 Geo. IV. & 1 Wm. IV. c. 47 s. 9.

82. From and after the fourth day of August one thousand eight hundred and thirty-four where any person being at the time of his death a trader within the true intent and meaning of the laws relating to bankrupts shall have died seized of or entitled to any estate or interest in lands tenements or hereditaments or other real estate which he shall not by his last will have charged with or devised subject to or for the payment of his debts and which would be assets for the payment of his debts due on any specialty in which the heirs were bound the same shall be assets to be administered in courts of equity for the payment of all the just debts of such person as well debts due on simple contract as on specialty and the heir or heirs at law devisee or devisees of such debtor and the devisee or devisees of such first-mentioned devisee or devisees shall be liable to all the same suits in equity at the suit of any of the creditors of such debtor whether creditors by simple contract or by specialty as they are liable to at the suit of creditors by specialty in which the heirs were bound:

Creditors by specialty to be paid first.

Provided always that in the administration of assets by courts of equity under and by virtue of this provision all creditors by specialty in which the heirs are bound shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty in which the heirs are not bound shall be paid any part of their demands.

Parol shall not demur by or against infants.
Imp. 7b. s. 10.

83. From and after the day and year last aforesaid where any action suit or other proceeding for the payment of debts or any other purpose shall be or have been commenced or prosecuted by or against any infant under the age of twenty years either alone or together with any other person or persons the parol shall not demur but such action suit or other proceeding shall be prosecuted and carried on in the same manner and as effectually as any action or suit could before the passing of this Act be carried on or prosecuted by or against any infant where according to law the parol did not demur.

Infants to make conveyances under order of the court.
Imp. 7b. s. 11.

84. Where any suit hath been or shall be instituted in any court of equity for the payment of any debts of any person or persons deceased to which their heir or heirs devisee or devisees may be subject or liable and such court of equity shall decree the estates liable to such debts or any of them to be sold for satisfaction of such debt or debts and by reason of the infancy of any such heir or heirs devisee or devisees an immediate conveyance thereof cannot as the law at present stands be compelled in every such case such court shall direct and if necessary compel such infant or infants to convey such estate so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof and in such manner as the said court shall think proper and direct and

every such infant shall make such conveyance accordingly and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons being an infant or infants was or were at the time of executing the same of the full age of twenty-one years.

85. Where any lands tenements or hereditaments have been or shall be devised in settlement by any person or persons whose estate under this Act or by law or by his or their will or wills shall be liable to payment of any of his or their debts and by such devise shall be vested in any person or persons for life or other limited interest with any remainder limitation or gift over which may not be vested or may be vested in some person or persons from whom a conveyance or other assurance of the same cannot be obtained or by way of executory devise and a decree shall be made for the sale thereof for the payment of such debts or any of them it shall be lawful for the court by whom such decree shall be made to direct any such tenant for life or other person having a limited interest or the first executory devisee thereof to convey release assign surrender or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers or in such manner as the court shall think proper and every such conveyance release surrender assignment or other assurance shall be as effectual as if the person who shall make and execute the same were seized or possessed of the fee simple or other whole estate so to be sold.

Persons having a life interest may convey the fee simple if the estate is ordered to be sold.

Imp. 11 Geo. IV. & 1 Wm. IV. c. 47 s. 12.

86. The two sections last preceding shall extend and the same are hereby extended to authorize courts of equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees as are referred to in the said section last but one preceding and also of lands tenements or hereditaments devised in settlement as mentioned in the said last preceding section and to authorize such sales and mortgages to be made in cases where the tenant for life or other person having a limited interest or the first executory devisee as hereinbefore referred to is an infant.

Courts of equity authorized to direct mortgages as well as sales.

Imp. 2 & 3 Vic. c. 60.

87. When any such sale or mortgage shall be made the surplus (if any) of the money raised by such sale or mortgage which shall remain after answering the purposes for which the same shall have been raised and defraying all legal costs and expenses shall be considered in all respects of the same nature and descend or devolve in the same manner as the estate or the lands tenements or hereditaments so sold or mortgaged and shall belong to the same persons be subject to the same limitations and provisions and be applicable to the same purposes as such estate or such lands tenements or hereditaments would have belonged and been subject and applicable to in case no such sale or mortgage had been made.

Surplus of money raised by sale or mortgage after defraying expenses to descend or devolve as the estate.

Imp. 1b.

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Provisions
extended to
lands &c.
of deceased
debtor in
certain cases.
Imp. 11 & 12
Vic. c. 87.

88. In cases in other respects falling within the provisions of the two sections last but two preceding the section last but two preceding shall extend and is hereby extended to any case in which any lands tenements or hereditaments of any deceased person shall by descent or otherwise than by devise be vested in the heir or co-heirs of such person subject to an executory devise over in favour of a person or persons not existing or not ascertained and in any such case it shall be lawful for the court by whom any decree shall be made as mentioned to direct such heir or co-heirs although an infant or infants to convey release assign surrender or otherwise assure the fee simple or other the whole interest to be sold to the purchaser or purchasers or as such court shall think proper and every such conveyance release assignment surrender or other assurance shall be as effectual as if the heir or co-heirs making and executing the same was or were seized or possessed of the fee simple or other whole interest and estate so to be sold and if an infant or infants was or were of full age.

Commencement and short title.

Commencement
of Act.
Short title.

89. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Succession Act of 1867.*"⁽¹⁾

(1) See footnote (1) printed on p. 4329.