

No. VIII.

An Act for adopting certain Acts of Parliament passed in the Third and Fourth Years of the Reign of His present Majesty King William the Fourth in the Administration of Justice in New South Wales in like manner as other Laws of England are applied therein. [12th August, 1836.]

IMPERIAL ACTS
ADOPTION.
—

WHEREAS certain Acts of Parliament were passed in the third and fourth years of the reign of His present Majesty King William the Fourth intituled respectively “*An Act for the amendment of the Law relating to Dower*” and “*An Act for the amendment of the Law of Inheritance*” and whereas it is expedient to adopt and apply the said recited Acts of Parliament in the administration of justice in New South Wales Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That the said recited Acts of Parliament and every clause provision and enactment therein respectively contained (save and except as hereinafter is provided) shall be and the same are and is hereby

Preamble.

3 and 4 Gul. IV. cap.

105.

3 and 4 Gul. IV. cap.

106.

Adopted and to be
applied in the
administration of
justice.

English Dower Act Adopted, 3 & 4 Wm. 4, c. 105.

hereby adopted and directed to be applied in the administration of justice in the said Colony and its Dependencies in like manner as others Laws of England are therein applied.

Commencement of Act.

2. And whereas it is expedient that the said recited Acts of Parliament should not commence or take effect in the Colony of New South Wales until the first day of January next ensuing Be it enacted That the said recited Acts of Parliament shall not commence or take effect in the Colony aforesaid before the first day of January in the year one thousand eight hundred and thirty-seven and that every clause and provision in said recited Acts shall from and after the said first day of January have only the same force and effect in the Colony of New South Wales as the same have had in His Majesty's Kingdom of England from and after the thirty-first day of December in the year one thousand eight hundred and thirty-three and the first day of January in the year one thousand eight hundred and thirty-four respectively.

ANNO TERTIO ET QUARTO GULIELMI IV. REGIS.

CAP. CV.

ENGLISH DOWER ACT
ADOPTED.

An Act for the amendment of the Law relating to Dower.

Meaning of the words in the Act.

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same 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 the word "Land" shall extend to manors advowsons messuages and all other hereditaments whether corporeal or incorporeal (except such as are not liable to dower) and to any share thereof and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing.

"Land."

Number.

Widows to be entitled to dower out of equitable estates.

2. And be it further enacted That 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 or partly equitable shall be an estate of inheritance in possession or equal to an estate of inheritance in possession (other than an estate in jointenancy) then his widow shall be entitled in equity to dower out of the same land.

Seisin shall not be necessary to give title to dower.

3. And be it further enacted That 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 provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

No dower out of estates disposed of.

4. And be it further enacted That no widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his life time or by his will.

Priority to partial estates charges and specialty debts.

5. And be it further enacted That all partial estates and interests and all charges created by any disposition or will of a husband and all debts incumbrances 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.

English Dower Act Adopted, 3 & 4 Wm. 4, c. 105.

6. And be it further enacted That 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.

Dower may be barred by a declaration in a deed

7. And be it further enacted That 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.

Or by a declaration in the husband's will.

8. And be it further enacted That 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.

Dower shall be subject to restrictions.

9. And be it further enacted That 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.

Devise of real estate to the widow shall bar her dower.

10. And be it further enacted That no gift or bequest made by any husband to be 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.

Bequest of personal estate to the widow shall not bar her dower.

11. Provided always and be it further enacted 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.

Agreement not to bar dower may be enforced.

12. And be it further enacted That nothing in this Act contained shall interfere with any Rule of Equity or of any Ecclesiastical Court by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.

Legacies in bar of dower still entitled to preference.

13. And be it further enacted That no widow shall hereafter be entitled to dower *ad ostium ecclesie* or dower *ex assensu patris*.

Certain dowers abolished.

14. And be it further enacted That this Act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of January one thousand eight hundred and thirty-four and shall not give to any will deed contract engagement or charge executed entered into or created before the said first day of January one thousand eight hundred and thirty-four the effect of defeating or prejudicing any right to dower.

Act not to take effect before the 1st January 1834.

ANNO TERTIO ET QUARTO GULIELMI IV. REGIS.

CAP. CVI.

ENGLISH
INHERITANCE ACT
ADOPTED.

An Act for the amendment of the Law of Inheritance. [29th
August, 1833.]

Meaning of words in
the Act.

"Land."

"The Purchaser."

"Descent."

"Descendants."

"Person last en-
titled."

"Assurance."

Number and gender.

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same 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 the word "Land" shall extend to manors advowsons messuages and all other hereditaments whether corporeal or incorporeal and whether freehold or copyhold or of any other tenure and whether descendible according to the Common Law or according to the custom of gavelkind or borough English or any other custom and to money to be laid 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 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 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 and the expression "Descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor 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 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 and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Descent shall always
be traced from the
purchaser but the
last owner shall be
considered to be the
purchaser unless the
contrary be proved.

2. And be it further enacted That 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.

English Inheritance Act Adopted, 3 & 4 Wm. 4, c. 106.

3. And be it further enacted That when any land shall have been devised by any testator who shall die after the thirty-first day of December one thousand eight hundred and thirty-three 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 executed after the said thirty-first day of December one thousand eight hundred and thirty-three 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.

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

4. And be it further enacted That 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 an assurance executed after the said thirty-first day of December one thousand eight hundred and thirty-three 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 who shall depart this life after the said thirty-first of December one thousand eight hundred and thirty-three then and in any such cases such land shall descend and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land.

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.

5. And be it further enacted That 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.

Brothers &c. shall trace descent through their parent.

6. And be it further enacted That 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 their 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.

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

7. And be it further enacted and declared That 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 that 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 that no female maternal 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.

The male line to be preferred.

8. And be it further enacted and declared That 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.

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

English Inheritance Act Adopted, 3 & 4 Wm. 4, c. 106.

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.

9. And be it further enacted That 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.

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

10. And be it further enacted That 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 unless such land shall have escheated in consequence of such attainder before the first day of January one thousand eight hundred and thirty-four.

Act not to extend to any descent before January 1834.

11. And be it further enacted That this Act shall not extend to any descent which shall take place on the death of any person who shall die before the said first day of January one thousand eight hundred and thirty-four.

Limitations made before the 1st January 1834 to the heirs of a person then living shall take effect as if the Act had not been made.

12. And be it further enacted That where any assurance executed before the said first day of January one thousand eight hundred and thirty-four or the will of any person who shall die before the same first day of January one thousand eight hundred and thirty-four shall contain any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase then the person or persons who would have answered such description of heir if this Act had not been made shall become entitled by virtue of such limitation or gift whether the person named as ancestor shall or shall not be living on or after the said first day of January one thousand eight hundred and thirty-four.