

*Real Estate of Intestates Distribution.***No. XX.**

REAL ESTATE
OF INTESTATES
DISTRIBUTION.

An Act to alter the succession to Real Estate in cases of Intestacy. [*Reserved—20th December, 1862.*]

Preamble.

WHEREAS it is expedient to alter the law relating to the succession to real estate in cases of intestacy Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

Intestate land not heritable but to pass as personalty.

1. From and after the passing of this Act all land which by the operation of the law relating to real property now in force would upon the death of the owner intestate in respect of such land pass to his heir-at-law shall instead thereof pass to and become vested in his personal representatives in like manner as is now the case with chattel real property.

Land to be included in inventory &c.

2. Lands held in trust or by way of mortgage passing under this Act shall be subject to the same trusts and equities as the same would have been subject to if they had descended to the heir and all other lands so passing shall be included by the administrator in his inventory and account and be disposable in like manner as other personal assets without distinction as to order of application for payment of debts or otherwise Provided that nothing herein contained shall give to any husband on the death of his wife intestate any greater interest in the real estate of his wife or in the produce thereof upon sale than a tenancy for life by the curtesy nor to any widow a greater interest in the real estate of her husband on his death intestate than the rights she would otherwise have had as dowress thereon And provided also that in case of the sale of any such real estate by virtue of this Act provision shall be made by order of the Court or Judge for securing out of the produce of the sale such payments as shall be equivalent to the right of such husband or wife as tenant by the curtesy or dowress.

Curtesy and dower retained.

A Judge may make special order relating thereto.

3. It shall be lawful from time to time for any Judge of the Supreme Court upon the application of the administrator or of any person beneficially interested and after such previous notice to other parties and inquiry as he shall think fit to order and direct the course of proceeding which shall be taken in regard to the time and mode of sale of such land—the letting and management thereof until sale—the application for maintenance or advancement or otherwise of shares of infants—the expediency and 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.

Judge may order partition.

4. In any case wherein upon such inquiry the Judge shall be satisfied that a partition of the land would be advantageous to the parties interested therein it shall be lawful for such Judge to appoint one or more arbitrators to effect such partition and to exercise in regard thereto under his direction and control powers similar to those of commissioners acting under a decree in equity for partition And the report and final award of the said arbitrators setting forth the particulars of the land allotted to each party interested shall when signed by them and confirmed by the order of a Judge and when also registered in the office of the Registrar General be effectual without the necessity of any further conveyance to vest in each allottee the land

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land so allotted And if such allotment be made subject to the charge of any money payable to any other party interested for equalizing the partition such charge shall take effect according to the terms and conditions in regard to time and mode of payment and otherwise which shall be expressed in such award without the necessity of any further instrument being made or executed.

5. It shall be lawful for the Supreme Court from time to time to make rules for the ordinary guidance of administrators in relation to real estate administered as personal assets either by inserting the same in letters of administration or promulgating the same in like manner with other general rules affecting the practice of the Court Provided that no such rules shall prejudice or control the effect of any special order to be made by a Judge upon such inquiry as aforesaid in any particular case But provided further that every such special order shall be subject to control or revision by the full Court on appeal thereto by the administrator or any other party interested Provided that a copy of such rules shall be laid before both Houses of Parliament within one month from the issue thereof if Parliament be then in Session or otherwise within one month after the commencement of the next ensuing Session.

Supreme Court may frame general rules.

6. The preceding provisions shall be alike applicable to any executor to whom in case of partial intestacy land shall pass under this Act also to the Curator of Intestate Estates and to any other person fulfilling a like duty.

Same rules to apply to executors and administration by Curator of Intestate Estates.

7. No executor or administrator 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 other person as the Court or Judge shall appoint.

Administrator's trust not to be prolonged without his own consent.

8. This Act shall be styled and may be cited as the "Real Estate of Intestates Distribution Act of 1862" and shall take effect from and after the first day of July one thousand eight hundred and sixty-three.

Short title. Commencement.
