

Inheritance.

Act No. 19, 1901.

An Act to consolidate Enactments relating to
the law of Inheritance. [4th October 1901.]

INHERITANCE.

BE it enacted by the King'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:—

1. This Act shall be called the "Inheritance Act of 1901." Short title.
2. The Acts mentioned in the Schedule hereto are, to the extent therein expressed, hereby repealed. Repeal.
3. In this Act, unless the context or subject-matter otherwise indicates or requires,— Interpretation.

"The purchaser" means the person who last acquired the land otherwise than by descent or than by any escheat or partition, by the effect of which the land has become part of or descendible in the same manner as other land acquired by descent.

"Descent" means the title to inherit land by reason of consanguinity as well where the heir is an ancestor or collateral relation as where he is a child or other issue.

"Descendants" of any ancestor extends to all persons who must trace their descent through such ancestor.

"The person last entitled to land" extends 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" means any deed or instrument (other than a will) by which any land is conveyed or transferred at law or in equity.
4. In every case descent shall be traced from the purchaser, and to the intent that pedigree may never be carried further back than the circumstances of the case and the nature of the title 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 is proved that he inherited the same, in which case the person from whom he inherited shall be considered to have been the purchaser, unless it is proved that he inherited the same; and in like manner the last person from whom the land is proved to have been inherited shall in every case be considered to have been the purchaser unless it is proved that he inherited the same. Descent to be traced from the purchaser, but person last entitled to be considered to be the purchaser unless the contrary is proved.
Ibid., s. 2.
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In case of total failure of heirs of purchaser descent to be traced from person last entitled.
26 Vic. No. 12, ss. 20, 21.

5. Where there is a total failure of heirs of the purchaser, or where any land is descendible as if an ancestor had been the purchaser thereof, and there is 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.

Heir entitled under a will shall take as devisee.
3 & 4 Wm. IV, c. 106, s. 3.

6. When any land has been or is devised by any testator dying after the thirty-first day of December, one thousand eight hundred and thirty-six to the heir, or to the person who is the heir of such testator, such heir shall be considered to have acquired the land as devisee and not by descent.

Limitation to grantor or his heirs creates an estate by purchase.

Ibid.

7. When any land has been limited by any assurance executed or to be executed after the thirty-first day of December, one thousand eight hundred and thirty-six, to the person or to the heirs of the person who has thereby 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.

Where heirs take by purchase under limitations to the heirs of their ancestor, descent to be traced as if the ancestor had been the purchaser.
Ibid. s. 4.

8. When any person has 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 executed or to be executed after the thirty-first day of December, one thousand eight hundred and thirty-six, or under any such limitation, or under any limitation having the same effect contained in a will of any testator dying after such date aforesaid, 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.

Brothers, &c., to trace descent through parent.
Ibid. s. 5.

9. 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.

Lineal ancestor preferred to collaterals claiming through him.
Ibid. s. 6.

10. Every lineal ancestor shall be capable of being heir to any of his issue, and in every case where there is 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.

Male line to be preferred.
Ibid. s. 7.

11. (1.) 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 have failed.

(2) 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 have failed.

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(3) No female maternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants have failed.

12. (1) Where there is 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.

Mother of more remote to be preferred to mother of less remote male ancestor.
3 & 4 Wm. IV, c. 106, s. 8.

(2) Where there is a failure of male paternal 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.

13. 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 is a male and next after the common ancestor where such common ancestor is 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.

Half blood to inherit.
Ibid. s. 9.

14. This Act shall not extend to any descent taking place on the death of any person who died before the first day of January, one thousand eight hundred and thirty-seven, and nothing in this Act shall affect the provisions of the Act twenty-sixth Victoria number twenty, the Probate Act of 1890, the Probate Act of 1890 Amendment Act, and the Wills Probate and Administration Act, 1898, or any of them.

Extent of Act.
Ibid. s. 11.

15. Where any assurance executed before the said first day of January, one thousand eight hundred and thirty-seven, or the will of any person dying before the same first day of January, one thousand eight hundred and thirty-seven, contains any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir are entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act or the Acts hereby repealed had not been passed shall become entitled by virtue of such limitation or gift, whether the person named as ancestor was or was not living on or after the said first day of January, one thousand eight hundred and thirty-seven.

Limitations made before the 1st January, 1837, to the heirs of a person then living shall take effect as if the Act had not been passed.

Ibid. s. 12.

16. When the person from whom the descent of any land is to be traced has had any relation who, having been attainted, has died before such descent took place, such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting

Descent through person attainted.
Ibid. s. 10.

Act No. 20, 1901.

Devonshire-street Cemetery.

inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land escheated in consequence of such attainder before the first day of January, one thousand eight hundred and thirty-seven.

SCHEDULE.

Number of Act.	Title.	Extent of repeal.
7 Wm. IV, No. 8 26 Vic. No. 12 ...	An Act adopting certain Acts of Parliament. Trust Property Act of 1862.	The whole so far as it relates to the statute 3 & 4 Wm. IV, c. 106. Ss. 20, 21.