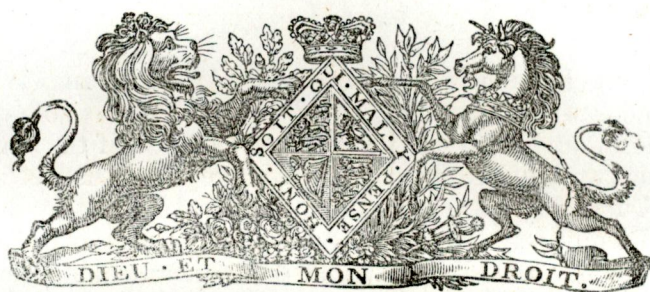


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 19 September, 1862.* }

CHA. TOMPSON,
Clerk of Legislative Assembly.

New South Wales.



ANNO VICESIMO SEXTO

VICTORIÆ REGINÆ.

No. .

An Act to alter the succession to Real Estate in cases of Intestacy.

WHEREAS it is expedient to alter the law relating to the succession Preamble.
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
5 Parliament assembled and by the authority of the same as follows:—

1. From and after the passing of this Act all land which Intestat land not heritable but to pass as personalty.
by the operation of the law relating to real property then in force would
upon the death intestate of the owner of such land pass to his heir-at-law
shall instead thereof pass to and become vested in his widow his children
10 or other next of kin (as the case may be) in equal proportions Provided
that the estate in such land so passing and vesting shall be an absolute
estate in fee simple and if there be more than one taker thereof then also
a tenancy in common Provided also that as to any such land passing
wholly or partly to a widow she shall have no claim thereon to dower.

15 2. Whenever any person to whom any such land shall so pass shall Administrator or Curator where infants take.
be an infant under the age of twenty-one years or subject to any other
temporary legal disability such land shall during such disability be taken
and held in trust by the administrator of the deceased owner Provided
that letters of administration may be applied for and granted by the
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ceedings thereon and in relation thereto shall be as nearly as possible the

Law of Primogeniture Abolition.

same as in the case of personal estate and the value of the land be computed in like manner. Provided also that in default of letters of administration being obtained such land shall be taken and held in trust by the Curator of Intestate Estates and be administered by him as by any other
5 administrator appointed by the Supreme Court.

3. Such Curator or administrator shall have all usual and necessary powers and authorities of a trustee for managing and letting such land and receiving the rents and profits thereof and distributing the same in the proportions aforesaid among the parties interested and in the case of infants
10 not having parents or duly appointed guardians shall have power to apply their respective shares of income to their support maintenance and education during their respective minorities and power also to invest the shares of any absent interested parties in Government or real securities and also to give valid receipts for all trust moneys and may out of such rents
15 and profits reimburse himself all costs charges and expenses and retain such amount of commission as may be fixed by the rules to be made as hereinafter mentioned.

Powers of management &c. and support of infants.

4. Any person claiming to be entitled to any share in any such land may by summons which may be granted *ex parte* upon affidavit by
20 and under the hand of any Judge of the Supreme Court or if the value of such share be under two hundred pounds any Judge of a District Court summon the said Curator or other administrator and the other parties interested for partition or sale to shew cause why a partition or a sale should not take place and such Judge may at the hearing make such order
25 before such Judge as he shall deem just and every such order shall be final and conclusive against all parties appearing at or duly summoned to such hearing.

Summary jurisdiction for partition or distribution.

5. As soon as conveniently may be after the passing of this Act the Judges of the Supreme Court and the District Court Judges or any
30 two of such Judges respectively may make all such rules as may appear necessary for carrying this Act into execution and such rules upon being published in the *Gazette* but not otherwise shall have the full force of law.

Rules to be made for executing Act.

6. This Act shall be styled and may be cited as the "Real Estate
of Intestates Distribution Act of 1862." Short title.

1862.

REAL ESTATE OF INTESTATES DISTRIBUTION BILL.

REPORT.

THE SELECT COMMITTEE of the Legislative Council, for whose consideration and Report was referred, on 7th October, 1862, the "*Real Estate of Intestates Distribution Bill*," have agreed to the following Report :—

Your Committee have made several alterations in the Bill, which have appeared to them necessary to remove objections, without prejudice to the main purpose of the measure.

Your Committee do not regard the consideration of this Bill as calling upon them to pass any opinion on the policy of the general system of primogeniture, regarded nationally or socially, seeing that this system is practically carried out more by marriage and testamentary settlements than through the operation of the law of descent. There are very few families whose wealth admits of a sufficient provision being made for the eldest son, as the family representative, in which settlements of this nature do not operate,—to the control and exclusion of the law of descent. In these cases, also, due provision is generally made for younger children, by charges on the patrimony of the heir. These, although differing according to circumstances, and to the varying intentions of successive inheritors of the family estate, still make some such effectual provision in nearly all cases; while the law of descent wholly disregards it. With such settlements, and with the unrestrained will of testators, the present measure does not in the slightest degree interfere. It is urged, in favour of a change in the law, that cases of intestacy, in parents whose families are unprovided for by settlements, most frequently occur in a class whose property is not more than adequate for the bare maintenance and education of the family, and among whom the monopoly of the eldest son tends to reduce the widow and younger children to destitution, without conferring on the heir an estate of sufficient magnitude and stability to answer the ends for the attainment of which alone, a system of primogeniture is upheld and justified.

Whatever weight, however, may be allowed to these considerations, in favour of some change in the existing law, your Committee
have

have no hesitation in rejecting that proposed to be substituted by the Bill in its original form. It is not easy to believe that its framers were aware of the legal effect of its enactments. No provision being made for distribution *per stirpes*, similar to that contained in the Statute of distributions, "next of kin" would signify only those of *nearest* and *equal* degree, who happened to survive the intestate. Thus, one son might still take all, as at present, to the exclusion of any number of grandchildren, and it might turn on the chance of an hour's survivorship, whether the property should all descend in one direction, or pass in fifty broken shares in another. In default of nearer relatives, all next of kin of the intestate, however remote, scattered, and numerous, would inherit as tenants in common, in equal undivided shares *per capita*; and a widow, although she is deprived absolutely of dower, would be restricted by the language of the Act to one such share only, in common, possibly, with a hundred collateral relations of her husband.

The Bill, moreover, would sow the seeds of interminable litigation, by passing a fraction of the legal estate to each of the next of kin, so as to render it impossible to make a title to land without the signature of all. Such a measure would more than nullify all the advantages which the Act passed this Session for simplifying transfer of land is intended to afford.

Your Committee have endeavoured to remove these objections, without prejudice to what they understand to be the main object of the Bill. Instead of merely distributing the property among next of kin *per capita*, they have followed the law for distribution of personal estate, under which the shares of grandchildren are regulated by Statute. They have, however, retained the rights of surviving husbands and wives to curtesy and dower, instead of giving them the distributive shares to which they would be respectively entitled in regard to personal estate. No sufficient reason for a change in this particular has been alleged.

They have also availed themselves of the personal representation of the deceased, by the administrator, as an intervening trustee for parties interested, creditors included, and thus avoided that inextricable confusion of title to which allusion has been made. This is not without precedent in the existing law, inasmuch as long terms of years, and renewable leaseholds, already pass to executors or administrators; and their administration may give rise to the same questions as to mode and time of sale, management, partition, &c., which are liable to occur in regard to freehold estates under the law now proposed.

Your Committee are not aware that it has ever been complained that the existing law is inadequate to maintain the rights of parties interested in such property. Having, however, regard to the consideration, that under the proposed law real estate would be much more desirable

frequently placed in the hands of administrators than leaseholds have been under the subsisting law ; your Committee have thought it desirable to provide for the facilitation of management, sale, and partition of such property, as circumstances may require, under judicial supervision. They have endeavoured to effect this end in a more practicable and effectual manner than is provided by the clauses inserted with a similar intent in the Bill as referred to them ; and they now submit such Bill, with the alterations which are for the above reasons suggested, to the consideration of your Honorable House.

Chairman.

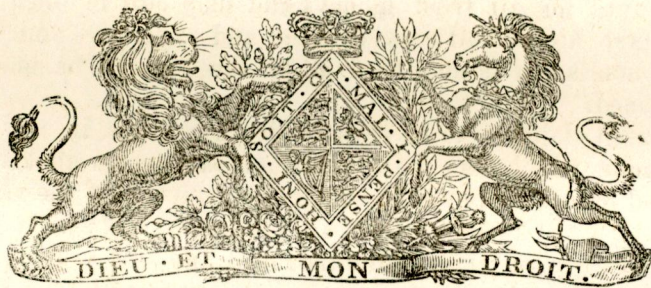
*Legislative Council Chamber,
Sydney, November, 1862.*

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*Legislative Assembly Chamber,
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ANNO VICESIMO SEXTO

VICTORIÆ REGINÆ.

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(As amended and agreed to in Select Committee.)

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shall instead thereof pass to and become vested in his widow his children
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119—

(b)

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Law of Primogeniture Abolition. Real Estate of Intestates Distribution.

same as in the case of personal estate and the value of the land be computed in like manner. Provided also that in default of letters of administration being obtained such land shall be taken and held in trust by the Curator of Intestate Estates and be administered by him as by any other administrator appointed by the Supreme Court.

3. Such Curator or administrator shall have all usual and necessary powers and authorities of a trustee for managing and letting such land and receiving the rents and profits thereof and distributing the same in the proportions aforesaid among the parties interested and in the case of infants not having parents or duly appointed guardians shall have power to apply their respective shares of income to their support maintenance and education during their respective minorities and power also to invest the shares of any absent interested parties in Government or real securities and also to give valid receipts for all trust moneys and may out of such rents and profits reimburse himself all costs charges and expenses and retain such amount of commission as may be fixed by the rules to be made as hereinafter mentioned.

Powers of management &c. and support of infants.

4. Any person claiming to be entitled to any share in any such land may by summons which may be granted *ex parte* upon affidavit by and under the hand of any Judge of the Supreme Court or if the value of such share be under two hundred pounds any Judge of a District Court summon the said Curator or other administrator and the other parties interested for partition or sale to shew cause why a partition or a sale should not take place and such Judge may at the hearing make such order before such Judge as he shall deem just and every such order shall be final and conclusive against all parties appearing at or duly summoned to such hearing.

Summary jurisdiction for partition or distribution.

5. As soon as conveniently may be after the passing of this Act the Judges of the Supreme Court and the District Court Judges or any two of such Judges respectively may make all such rules as may appear necessary for carrying this Act into execution and such rules upon being published in the *Gazette* but not otherwise shall have the full force of law.

Rules to be made for executing Act.

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.

Intestate land not heritable but to pass as personalty.

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 land 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.

Land to be included in inventory &c.

Curtsey and dower retained.

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 enquiry as he shall think fit to order and direct the course of proceeding which

A Judge may make special order relating thereto.

Real Estate of Intestates Distribution.

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.

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 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.

Judge may order partition.

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 enquiry 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.

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.

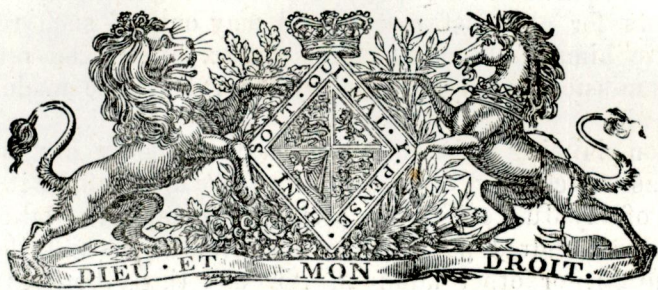
8. This Act shall be styled and may be cited as the "Real Estate Short title of Intestates Distribution Act of 1862."

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 19 September, 1862.* }

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15 2. Whenever any person to whom any such land shall so pass shall Administrator or
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20 Supreme Court although there be no personal estate and that all the pro-
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~~Law of Primogeniture Abolition.~~ **Real Estate of Intestates Distribution.**

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3. Such Curator or administrator shall have all usual and necessary powers and authorities of a trustee for managing and letting such land and receiving the rents and profits thereof and distributing the same in the proportions aforesaid among the parties interested and in the case of infants not having parents or duly appointed guardians shall have power to apply their respective shares of income to their support maintenance and education during their respective minorities and power also to invest the shares of any absent interested parties in Government or real securities and also to give valid receipts for all trust moneys and may out of such rents and profits reimburse himself all costs charges and expenses and retain such amount of commission as may be fixed by the rules to be made as hereinafter mentioned.

Powers of management &c. and support of infants.

4. Any person claiming to be entitled to any share in any such land may by summons which may be granted *ex parte* upon affidavit by and under the hand of any Judge of the Supreme Court or if the value of such share be under two hundred pounds any Judge of a District Court summon the said Curator or other administrator and the other parties interested for partition or sale to shew cause why a partition or a sale should not take place and such Judge may at the hearing make such order before such Judge as he shall deem just and every such order shall be final and conclusive against all parties appearing at or duly summoned to such hearing.

Summary jurisdiction for partition or distribution.

5. As soon as conveniently may be after the passing of this Act the Judges of the Supreme Court and the District Court Judges or any two of such Judges respectively may make all such rules as may appear necessary for carrying this Act into execution and such rules upon being published in the *Gazette* but not otherwise shall have the full force of law.

Rules to be made for executing Act.

1. From and after the passing of this Act all land which by the operation of the law relating to real property then 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. 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.

Intestate land not heritable but to pass as personalty.

Curtsey and dower retained.

2. All such land shall be included by the administrator in his inventory and account and be disposable in like manner as other personal assets except as aforesaid without distinction as to order of application for payment of debts or otherwise. Provided that 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 enquiry 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

Land to be included in inventory &c.

But a Judge may make special order relating thereto.

Real Estate of Intestates Distribution.

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.

3. In any case wherein upon such inquiry the Judge shall be ^{Judge may order partition.} 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 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.

4. 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 ^{Supreme Court may frame general rules.} Provided that no such rules shall prejudice or control the effect of any special order to be made by a Judge upon such enquiry 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.

5. 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.} But no executor or administrator shall ^{Administrator's trust not to be prolonged without his own consent.} 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.

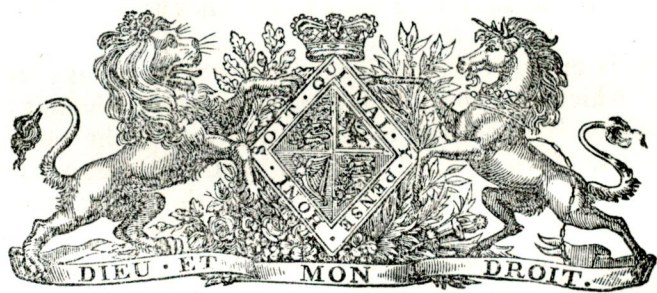
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Law of Primogeniture Abolition. Real Estate of Intestates Distribution.

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4. Any person claiming to be entitled to any share in any such land may by summons which may be granted *ex parte* upon affidavit by and under the hand of any Judge of the Supreme Court or if the value of such share be under two hundred pounds any Judge of a District Court summon the said Curator or other administrator and the other parties interested for partition or sale to shew cause why a partition or a sale should not take place and such Judge may at the hearing make such order before such Judge as he shall deem just and every such order shall be final and conclusive against all parties appearing at or duly summoned to such hearing.

Summary jurisdiction for partition or distribution.

5. As soon as conveniently may be after the passing of this Act the Judges of the Supreme Court and the District Court Judges or any two of such Judges respectively may make all such rules as may appear necessary for carrying this Act into execution and such rules upon being published in the *Gazette* but not otherwise shall have the full force of law.

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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 land 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.

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 satisfied that a partition of the land would be advantageous to the
 parties interested therein it shall be lawful for such Judge to appoint
 10 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
 15 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 so allotted And if such allotment be made subject to the charge
 of any money payable to any other party interested for equalizing the
 20 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
 25 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
 30 special order to be made by a Judge upon such enquiry 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.

6. The preceding provisions shall be alike applicable to any
 35 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.

7. No executor or administrator shall be required against his
 own consent to continue the duty of a trustee by managing the property
 40 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.

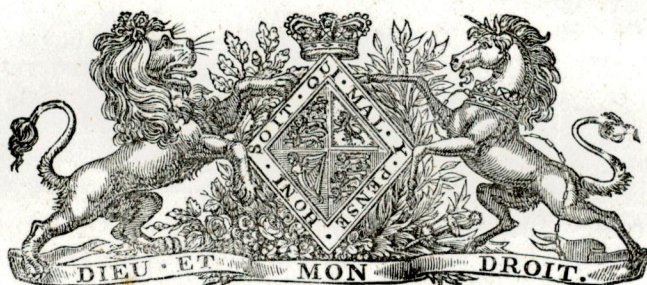
8. This Act shall be styled and may be cited as the “Real Estate Short title.
 of Intestates Distribution Act of 1862.”

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 19 September, 1862.* }

CHA. TOMPSON,
Clerk of Legislative Assembly.

New South Wales.



ANNO VICESIMO SEXTO

VICTORIÆ REGINÆ.

No. .

(As Amended in Committee of the Whole.)

An Act to alter the succession to Real Estate in cases of Intestacy.

WHEREAS it is expedient to alter the law relating to the succession Preamble.
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
5 Parliament assembled and by the authority of the same as follows :—

1. From and after the passing of this Act all land which Intestate land no heritable but to pass as personalty.
by the operation of the law relating to real property then in force would
upon the death intestate of the owner of such land pass to his heir-at-law
shall instead thereof pass to and become vested in his widow his children
10 or other next of kin (as the case may be) in equal proportions Provided
that the estate in such land so passing and vesting shall be an absolute
estate in fee simple and if there be more than one taker thereof then also
a tenancy in common Provided also that as to any such land passing
wholly or partly to a widow she shall have no claim thereon to dower.
- 15 2. Whenever any person to whom any such land shall so pass shall Administrator or Curator where infants take.
be an infant under the age of twenty-one years or subject to any other
temporary legal disability such land shall during such disability be taken
and held in trust by the administrator of the deceased owner Provided
that letters of administration may be applied for and granted by the
20 Supreme Court although there be no personal estate and that all the pro-
ceedings thereon and in relation thereto shall be as nearly as possible the
same

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(b)

NOTE.—The words and clauses to be omitted are ruled through; the words and clauses to be inserted are printed in black letter.

Law of Primogeniture Abolition. Real Estate of Intestates Distribution.

same as in the case of personal estate and the value of the land be computed in like manner. Provided also that in default of letters of administration being obtained such land shall be taken and held in trust by the Curator of Intestate Estates and be administered by him as by any other administrator appointed by the Supreme Court.

3. Such Curator or administrator shall have all usual and necessary powers and authorities of a trustee for managing and letting such land and receiving the rents and profits thereof and distributing the same in the proportions aforesaid among the parties interested and in the case of infants not having parents or duly appointed guardians shall have power to apply their respective shares of income to their support maintenance and education during their respective minorities and power also to invest the shares of any absent interested parties in Government or real securities and also to give valid receipts for all trust moneys and may out of such rents and profits reimburse himself all costs charges and expenses and retain such amount of commission as may be fixed by the rules to be made as hereinafter mentioned.

Powers of management &c. and support of infants.

4. Any person claiming to be entitled to any share in any such land may by summons which may be granted *ex parte* upon affidavit by and under the hand of any Judge of the Supreme Court or if the value of such share be under two hundred pounds any Judge of a District Court summon the said Curator or other administrator and the other parties interested for partition or sale to shew cause why a partition or a sale should not take place and such Judge may at the hearing make such order before such Judge as he shall deem just and every such order shall be final and conclusive against all parties appearing at or duly summoned to such hearing.

Summary jurisdiction for partition or distribution.

5. As soon as conveniently may be after the passing of this Act the Judges of the Supreme Court and the District Court Judges or any two of such Judges respectively may make all such rules as may appear necessary for carrying this Act into execution and such rules upon being published in the *Gazette* but not otherwise shall have the full force of law.

Rules to be made for executing Act.

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.

Intestate land not heritable but to pass as personalty.

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 land 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.

Land to be included in inventory &c.

Curtesy and dower retained.

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 enquiry as he shall think fit to order and direct the course of proceeding which

A Judge may make special order relating thereto.

Real Estate of Intestates Distribution.

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.

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 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.

Judge may order partition.

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 enquiry 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.

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.

REAL ESTATE OF INTESTATES DISTRIBUTION BILL.

SCHEDULE of the Amendments made by the Legislative Council in the Bill intituled "An Act to alter the succession to Real Estate in cases of Intestacy," returned to the Legislative Assembly with Message of 10th December, 1862.

R. O'CONNOR,
Clerk of Legislative Council.

Page 1. Omit clause 1; insert the following new clause:—

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."

Intestate land not heritable but to pass as personality.

Pages 1 and 2. Omit clause 2; insert the following new clause:—

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 land 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."

Land to be included in inventory &c.

Curtesy and dower retained.

Page 2. Omit clause 3; insert the following new clause:—

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 enquiry 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."

A Judge may make special order relating thereto.

Omit clause 4; insert the following new clause:—

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 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."

Judge may order partition.

Omit clause 5; insert the following new clause:—

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 enquiry 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."

Supreme Court may frame general rules.

After clause 5 insert the following new clauses:—

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.

Page 3. clause 6, line 44. After "1862" add "and shall take effect from and after the first day of July one thousand eight hundred and sixty-three."

Commencement.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 19 September, 1862. }*

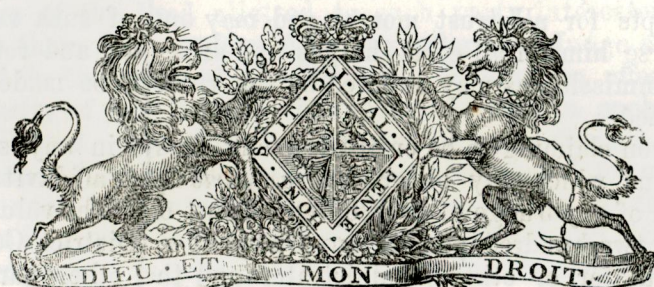
*CHA. TOMPSON,
Clerk of Legislative Assembly.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

*Legislative Council Chamber,
Sydney, 10 December, 1862. }*

*R. O'CONNOR,
Clerk of Legislative Council.*

New South Wales.



ANNO VICESIMO SEXTO

VICTORIÆ REGINÆ.

No. .

An Act to alter the succession to Real Estate in cases of Intestacy.

WHEREAS it is expedient to alter the law relating to the succession Preamble.

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

5 Parliament assembled and by the authority of the same as follows :—

1. From and after the passing of this Act all land which Intestate land no heritable but to pass as personalty. by the operation of the law relating to real property then in force would upon the death intestate of the owner of such land pass to his heir-at-law shall instead thereof pass to and become vested in his widow his children
10 or other next of kin (as the case may be) in equal proportions Provided that the estate in such land so passing and vesting shall be an absolute estate in fee simple and if there be more than one taker thereof then also a tenancy in common Provided also that as to any such land passing wholly or partly to a widow she shall have no claim thereon to dower.

15 2. Whenever any person to whom any such land shall so pass shall be an infant under the age of twenty-one years or subject to any other temporary legal disability such land shall during such disability be taken and held in trust by the administrator of the deceased owner Provided that letters of administration may be applied for and granted by the
20 Supreme Court although there be no personal estate and that all the proceedings thereon and in relation thereto shall be as nearly as possible the

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(b)

same

Administrator or Curator where infants take.

NOTE.—The words and clauses to be omitted are ruled through; the words and clauses to be inserted are printed in black letter.

Law of Primogeniture Abolition. Real Estate of Intestates Distribution.

same as in the case of personal estate and the value of the land be computed in like manner. Provided also that in default of letters of administration being obtained such land shall be taken and held in trust by the Curator of Intestate Estates and be administered by him as by any other administrator appointed by the Supreme Court.

3. Such Curator or administrator shall have all usual and necessary powers and authorities of a trustee for managing and letting such land and receiving the rents and profits thereof and distributing the same in the proportions aforesaid among the parties interested and in the case of infants not having parents or duly appointed guardians shall have power to apply their respective shares of income to their support maintenance and education during their respective minorities and power also to invest the shares of any absent interested parties in Government or real securities and also to give valid receipts for all trust moneys and may out of such rents and profits reimburse himself all costs charges and expenses and retain such amount of commission as may be fixed by the rules to be made as hereinafter mentioned.

Powers of management &c. and support of infants.

4. Any person claiming to be entitled to any share in any such land may by summons which may be granted *ex parte* upon affidavit by and under the hand of any Judge of the Supreme Court or if the value of such share be under two hundred pounds any Judge of a District Court summon the said Curator or other administrator and the other parties interested for partition or sale to shew cause why a partition or a sale should not take place and such Judge may at the hearing make such order before such Judge as he shall deem just and every such order shall be final and conclusive against all parties appearing at or duly summoned to such hearing.

Summary jurisdiction for partition or distribution.

5. As soon as conveniently may be after the passing of this Act the Judges of the Supreme Court and the District Court Judges or any two of such Judges respectively may make all such rules as may appear necessary for carrying this Act into execution and such rules upon being published in the *Gazette* but not otherwise shall have the full force of law.

Rules to be made for executing Act.

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.

Intestate land not heritable but to pass as personalty.

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 land 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.

Land to be included in inventory &c.

Curtsey and dower retained.

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 enquiry as he shall think fit to order and direct the course of proceeding which

A Judge may make special order relating thereto.

Real Estate of Intestates Distribution.

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
5 in regard to the administration of the property for the greatest advantage of all persons interested.

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
10 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
15 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 so allotted And if such allotment be made subject to the charge of any money payable to any other party interested for equalizing the
20 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.

Judge may order partition.

5. It shall be lawful for the Supreme Court from time to time
25 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
30 special order to be made by a Judge upon such enquiry 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.

Supreme Court may frame general rules.

6. The preceding provisions shall be alike applicable to any
35 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
40 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.

6. 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.

