

Intestates Real Estate.

ANALYSIS.

A BILL INTITULED

AN Act to make undevise'd Real Estate distributable amongst Next of Kin and to provide for the administration of the Estates of Deceased Persons in certain cases.

Title.

WHEREAS it is expedient that Real Estate as to which persons die intestate should be distributable amongst their Next of Kin and that better provision should be made for administering the estates of persons who die possessed of property within the Colony of New Zealand in cases where no will or letters of administration relating to such estates shall have been proved or granted in the Colony

Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows that is to say—

1. The Short Title of this Act shall be "The Intestates Real Estate Act 1869."

Short Title.

2. This Act shall come into operation on the one thousand eight hundred and day of

Commencement of Act.

3. The several Acts mentioned in the first Schedule hereto to the extent to which such Acts are in such Schedule expressed to be repealed shall be and the same are hereby repealed except as to acts done liabilities incurred privileges acquired appointments rules or orders made and proceedings taken under either of the said Acts.

Repeal of Act. First Schedule.

Interp, etation
clause.

4. In the construction and for the purposes of this Act the word "owner" shall mean any person seised of any freehold land at law or in equity in possession reversion remainder or expectancy.

Undevised freehold
estates to be vested
an administrator and
to be dealt with as
leaseholds for years
of the intestate.

5. In every case in which the Supreme Court shall be satisfied that the owner of any freehold land in New Zealand (including an estate *pur autre vie* whether it would have passed or gone to heirs or to executors or administrators) having power to dispose of such land by will otherwise than solely by appointment by will or by writing in the nature of a will in exercise of a power or who being a married woman would have had such power of disposition otherwise than as aforesaid had she been a *feme sole* shall after the commencement of this Act have died intestate as to such land or without leaving a will thereof of which probate or letters of administration with the will annexed shall be granted by the said Court within twelve months after the death of such owner such Court may on the application supported by affidavit of any person interested in the estate or of any creditor of the deceased grant a rule in the form in the second Schedule hereto that such land shall be dealt with as if it had been held for a term of years and shall commit the administration thereof to any person the said Court shall think proper to appoint as administrator In the event of such rule being granted all the estate of the deceased owner in such land or if a married woman all the estate which she would have had therein had she been a *feme sole* shall vest in the administrator thereof and shall be assets in his hands and be administered without any distinction between debts by specialty and debts by simple contract whether the heirs be or be not bound by the specialty debts and otherwise shall be subject to the same laws and go and be applied and distributed in the same manner in all respects unless hereby otherwise provided as if such land had been held for a term of years by the deceased and he had died actually intestate as to the same anything in the Acts mentioned in the third Schedule hereto to the contrary notwithstanding If in any case more than one such administrator shall be appointed all of them for the time being shall join and concur in every assignment or other assurance relating to such land Provided always that if a married woman shall be the owner of such land and she shall die leaving her husband surviving the distribution thereof shall be in accordance with the distribution of his personal estate had he died intestate leaving a widow anything in the Acts mentioned in the fourth Schedule hereto to the contrary notwithstanding the intention being that the widower shall stand in the same position with respect to the distribution of such land as aforesaid of his deceased wife as she would have stood in with respect to the distribution of his personal estate had he died intestate leaving her surviving Provided also that such land shall not be deemed of a wasting nature so as to require its conversion into money on that ground alone.

Second Schedule.

Third Schedule.

Fourth Schedule.

Power to appoint the
Curator to be the
administrator of
undevised freehold
estates.

Second Schedule.

6. The Supreme Court may upon any such application as aforesaid or upon the application of a Curator of the Estates of Deceased Persons supported by affidavit of a like nature (so far as may be) to that required in the case of a grant of letters of administration of the goods of a deceased person appoint such Curator by a rule in the form in the second Schedule hereto to be the administrator of such land as aforesaid under this Act and every rule when made appointing the Curator to be such administrator shall vest in and give to and impose on that officer the whole estate and interest which such deceased person had in such land and the same rights powers commission duties and liabilities so far as not hereby otherwise provided as if letters of administration had been granted to him and as if such land had been held for a term of years by the deceased.

7. The title of any administrator appointed under either of the last two preceding sections to the land to be administered and to the rents and profits thereof shall upon such appointment being made relate back to and be deemed to have arisen upon the death of the owner of such land as if there had been no interval of time between such death and appointment and if the same person shall be administrator of freehold land as is administrator of the goods of the deceased or executor of a will made by him disposing of property other than the land to be administered or administrator with such a will annexed causes of action of whatever kind may be joined in the same proceeding by or against such person but this shall not extend to enable causes of action to be joined contrary to any rule of practice of the Supreme Court for the time being in force.

The title of every administrator to have relation back to the death of the owner.

8. The practice and proceedings so far as may be upon granting letters of administration of the goods of a person dying intestate shall be applicable to administration rules of freehold land applied for under this Act by any person other than the Curator.

Proceedings upon administration rules applied for by private persons.

9. Every administrator of freehold land appointed under this Act shall be deemed a trustee within the meaning of any statute now or hereafter to be in force relating to trusts and trustees so far as such statute concerns the application for or towards the maintenance or education of an infant of income and the accumulation and investment of the residue and the application of the accumulations.

Every administrator under this Act to be deemed a trustee within statute of trusts.

10. On the death resignation or removal of any Curator the successor of the Curator so dying resigning or removed shall immediately on his appointment and by virtue thereof become administrator of all such freehold land as aforesaid as shall have been left unadministered by any predecessor And every such successor shall immediately on his appointment and by virtue thereof become entitled to the possession of all books accounts letters papers and documents of every description used by or in the possession or under the control of any predecessor relating to any estate administered by him or to the office of Curator.

Successors to have power of administrator *de bonis non*.

SCHEDULES.

THE FIRST SCHEDULE.

Section 2.

Date of Act.	Title of Act.	Extent of Repeal.
1 Vict. c. 26	"An Act for the amendment of the Laws with respect to Wills."	So much as relates to Section 6 of the said Act.

THE SECOND SCHEDULE.

Sections 4 and 5.

In the Supreme Court of New Zealand.

On the day of A.D. 18

UPON reading the affidavit of it is ordered that the freehold land of which A.B. was the owner at the time of his death shall be dealt with as if it had been held for a term of years and that C.D. of &c. [or E.F. a Curator of the Estates of Deceased Persons] shall be administrator thereof.

By the Court.

Section 4.

THE THIRD SCHEDULE.

Date of Act.	Title of Act.
11 George IV. and 1 William IV. c. 40.	"An Act for making better provision for the Disposal of the undisposed of Residues of the Effects of Testators."
11 George IV. and 1 William IV. c. 47.	"An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate."
3 and 4 William IV. c. 106	"An Act for the amendment of the Law of Inheritance."
1 Victoria c. 26	"An Act for the amendment of the Laws with respect to Wills."

Section 4.

THE FOURTH SCHEDULE.

Date of Act.	Title of Act.
22 and 23 Charles II. c. 10...	"An Act for the better Settling of Intestate Estates."
29 Charles II. c. 3	"An Act for Prevention of Frauds and Perjuries."
1 James II. c. 17	"An Act for Reviving and Continuance of several Acts of Parliament therein mentioned."