

## Intestate's Real Estate.

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AN ACT to provide for the more equitable Disposal of the Real Estate of Persons dying Intestate. Title.

WHEREAS it is expedient to make provision for the more equitable disposal of the Real Estate of persons dying intestate: Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act shall be "The Intestate's Real Estate Act, 1870." Short Title.

2. In the construction of this Act, the word "land" shall extend to any land, and to any estate or interest in land, whether legal or equitable, not being land belonging to any Aboriginal Native, within the meaning of "The Native Lands Act, 1865," and "The Native Lands Act, 1867," which upon the death of any person intestate would descend to the heir or coheiresses of such person. Interpretation.

3. When any person shall after the passing of this Act die intestate as to any land of or to which at the time of such death he was seised or entitled, such land shall immediately after probate of the will or letters of administration, as the case may be, to administer the personal estate of the deceased, shall have been granted to any person within the Colony, be deemed to be actually vested in the person to whom such probate or administration as the case may be shall have been granted, and the title of such person shall be deemed to relate back to the death of the intestate, as if no time had elapsed between such death and such probate or administration: Provided such probate On death, intestate land to vest in personal representative.

or administration shall have been issued or granted within two years after the death of the intestate person.

Personal representative to sell.

4. It shall be the duty of the person to whom such probate or administration shall have been granted as aforesaid, with all convenient speed after such land shall have become vested in him as aforesaid, to sell and dispose of the same subject nevertheless in the case of probate to any estate or interest therein created by partial devise (if any) so as to convert the same into money. 5

Sale to be by public auction or private contract.

5. Such land may be sold either altogether or in parcels, and either by public auction or private contract, and subject to such conditions as the vendor acting in such sale shall think fit; and the vendor may buy in and rescind any contract for sale without being responsible for any involuntary loss occasioned thereby. 10

Vendor to convey.

6. The vendor acting as aforesaid may execute and do all such conveyances assurances and acts for effectuating any sale made under the provisions of this Act as he shall think fit; and every such conveyance assurance and act duly made shall be effectual for conveying and assuring the land comprised therein. 15

Money realized to be personal estate.

7. After defraying all necessary expenses attending the conversion of such land into money as aforesaid, the balance of money arising therefrom shall be deemed to be part of the personal estate of the intestate, and shall be applied and dealt with accordingly in due course of administration. 20

Persons entitled to proceeds may require conveyance of land.

8. Notwithstanding anything herein contained, any person who after the sale of any land as aforesaid would be entitled to receive the entire proceeds arising from the same in due course of administration, shall be entitled at his own expense in all things to a conveyance of the said land at any time whilst the same shall remain unsold, subject nevertheless to any partial devise or other estate or interest then affecting the same in the hands of the person to whom such probate or administration as aforesaid shall have been granted; and it shall be the duty of such last-mentioned person upon demand to execute such conveyance accordingly: Provided always that it shall be lawful for such last-mentioned person, in lieu of immediately acceding to such demand, to apply to the Supreme Court upon petition, and after such previous notice as shall be prescribed in that behalf by the rules of the said Court, to order and direct the course of proceeding to be adopted by such last-mentioned person in regard to any such demand as aforesaid, and thereupon the said Court shall make such order therein as it shall think fit. 25 30 35 40

Court to make order regulating sales, &c., in certain cases.

9. The Supreme Court may from time to time, upon the petition of the person in whom any land shall have become vested by virtue of any such probate or administration as aforesaid, or of any person interested in the administration of such land under the provisions of this Act, and after such previous notice as may be prescribed by the rules of the Court in that behalf, and upon such inquiries as it shall think fit, order and direct the course of proceeding which shall be taken in regard to the time and mode of sale of any lands passing under this Act, the letting and management thereof until sale, the application for maintenance or advancement or otherwise of shares or interests of infants, the expediency or 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. 45 50

Partition may be ordered.

10. In any case wherein upon such inquiry the Court shall be satisfied that a partition of the land would be advantageous to the parties interested therein, the Court may appoint one or more arbitrators to effect such partition, and to exercise in regard thereto under its directions and control powers similar to those of Commissioners acting under a decree in Equity for partition: And upon the report and final award of the said arbitrators setting forth the 55 60

particulars of the land allotted to each party interested, the personal representative shall convey or transfer the same accordingly.

11. No personal representative 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 any other person as the Court shall appoint.

Trustee may relinquish trust in certain cases.

12. Every personal representative to whom lands shall pass under the provisions of this Act shall enter into the like bond, and make and exhibit the like accounts in reference to such lands, and shall be liable to the like penalties for neglect, as may for the time being be required to be entered into made or exhibited by, or as may be enforced against, any person to whom letters of administration of the personal estate of any person dying intestate is granted by the said Court: Provided that in case of an administrator one bond shall be sufficient as to both real and personal property.

Bond to be given by administrator.

13. The said Court, or any two or more of the Judges thereof, whereof the Chief Justice shall be one, shall have power from time to time to make such rules and regulations for the ordinary guidance of personal representatives in relation to lands passing under this Act, and for prescribing the forms of probates or letters of administration when the same are intended to affect lands under the provisions hereof, and for regulating the practice to be observed in obtaining the grant of any such probate or letters of administration, and the form of bond, and amount for which any such personal representatives are to give bond, and generally for carrying the provisions of this Act into effect, as to the said Court or Judges shall appear expedient; all which rules and regulations shall be made and promulgated, and shall have the same force and effect, and may be revoked or amended in the like manner as other rules and regulations affecting the practice and procedure of the said Court.

Court to make rules.