

SUPPLEMENTARY ORDER PAPER.

LEGISLATIVE COUNCIL.

Tuesday, the 24th day of October, 1871.

1. The Honourable Mr. SEWELL, upon the consideration of the amendments of the House of Representatives in the Intestate Estates Bill, to move the following amendments:—

2. In the construction of this Act the word "lands" shall extend to any land or any estate or interest in lands whether legal or equitable but nothing herein contained shall be deemed to apply to or affect the lands of any Aboriginal Native who may hereafter die intestate and for the purposes of this Act the term "Aboriginal Native" shall mean any person of the Aboriginal Native race, and any half-caste person of such race.

Interpretation.

3. In this Act the expression "letters of administration" shall include "the order to administer" in the case of the Curator of Intestate Estates administering.

Curators of Intestate Estates.

4. Immediately upon letters of administration or in the case of a partial devise or the deceased owner leaving a will only affecting personal estate upon probate of such will or letters of administration with such will annexed being granted the estate of the deceased person in all his undevise or partially devised land shall vest in the person to whom such letters of administration or probate shall be granted if undevise absolutely or if partially devised then subject to such partial devise and the title of such personal representative shall relate back to and be deemed to have arisen immediately upon the death of such owner as if there had been no interval of time between such death and the grant of such probate or letters of administration as the case may be.

Title of personal representative to relate back.

Letters of administration &c. to be conclusive evidence.

5. The production of any such letters of administration or probate shall be conclusive evidence that the deceased owner did in fact die without devising either wholly or partially any lands of which he died seized as owner except as in such letters of administration or probate respectively may be limited or expressed.

Dower abolished.

6. No widow shall be entitled to her dower out of any lands which shall pass under any of the provisions of this Act.

Personal representative to sell.

7. Subject as hereinafter enacted it shall be the duty of the person to whom such letters of administration or probate as the case may be 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 or of administration with will annexed to any estate or interest therein created by partial devise (if any) so as to convert the same into money.

Sale to be by public auction or private contract.

8. 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.

Vendor to convey.

9. 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.

Money realized to be personal estate.

10. 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 and the share or shares of any person or persons receivable or payable upon any distribution under any such administration as aforesaid shall be liable to succession duty in the like manner and at the like rate and with and subject to the like exceptions as personal estate is now liable to duty under or by virtue of the provisions contained in Parts III. and IV. of "The Stamp Duties Act 1866" and the provisions of that Act shall be applicable in the case of any such distribution as aforesaid as fully as if such share or shares were a legacy or legacies bequeathed by a testator to any such person or persons as aforesaid.

Persons entitled to proceeds may require conveyance of land.

11. 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 letters of administration or probate respectively as aforesaid shall have been granted and it shall be the duty of such last-mentioned person upon demand to execute such conveyance accordingly.

Persons entitled in certain other cases may require conveyance.

12. Notwithstanding anything herein contained any person who but for the grant of letters of administration or probate to the personal representative as hereinbefore provided would have been entitled under the will of any deceased owner to any land or any estate or interest in land or the proceeds thereof shall be entitled to a conveyance of such land estate or interest from the personal representative if the same shall remain unsold and if sold then to an account of such sale and of the distribution of the proceeds thereof and to receive from him such proceeds if undistributed subject to all just allowances: Provided that where any person shall under the provisions contained in this or the last preceding section take or obtain a conveyance

under the powers therein respectively mentioned such person shall be deemed to be a "successor" within the meaning of "The Stamp Duties Act 1866" and duty shall be calculated and payable upon the land estate or interest comprised in such conveyance in like manner at the like rate and with and subject to the like exemptions as if with respect to such land estate or interest such person had been the "successor" of a "predecessor" within the meaning of that Act prior to the passing of this Act: Provided further that if any such land estate or interest shall have been so sold as aforesaid then the proceeds of such sale shall be liable to succession duty in like manner as hereinbefore provided in the section of this Act.

13. It shall be lawful for the personal representative acting under any probate or letters of administration as the case may be in either of the cases mentioned in the last two preceding sections in lieu of making any such conveyance as therein respectively mentioned 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 the personal representative in regard to the same and thereupon the said Court may make such order therein as it shall think fit.

Personal representative may apply to Supreme Court for directions.

14. 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 terms 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.

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

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

Partition may be ordered.

16. 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.

17. 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.

18. No personal representative acting under the provisions of this Act who shall make any payment or do any act *bond fide* under or in pursuance of any letters of administration or probate as aforesaid shall be liable for the sums so paid or the acts so done by reason of the existence of any will of the deceased owner or any such will other

Personal representative acting *bond fide* protected.

than that of which probate has been granted if the existence of such will or such other will as the case may be was unknown to him at the time of such payments made or act *bond fide* done as aforesaid: Provided that nothing herein contained shall affect or prejudice the rights of any person entitled under such will against the person to whom any such payments shall have been made as aforesaid but the person so entitled shall have the same remedy against the person to whom such payments shall have been made as he would have had against such personal representative if the money had not been distributed under the provisions of this Act.

Construction of word "heirs." Persons entering under this Act to enter as assigns.

19. In the reading and construction of all Acts of Parliament and of all deeds and documents that shall from time to time after the day on which this Act shall come into operation subsist and be in force the word "heir" or "heirs" so far as relates to the deceased owners of undevise or partially devise lands shall be taken to mean and include the person to whom letters of administration of the personal estate or probate of the will of such deceased owner where such will only partially devise his lands or only affects personal estate shall be granted and any person who shall take any lands by virtue of this Act shall so take as if the same had come to him by will of the deceased owner but this Act shall not affect the construction of the word "heir" or "heirs" or of any words of similar import when used as words of limitation and not as words of purchase.

Court to make rules.

20. 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 and amount for which any such personal representatives are to give bond and generally all such rules of practice and procedure and all other rules and regulations 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.

When any land subject to the provisions of "The Land Transfer Act 1870" shall be vested by virtue of this Act in any person as personal representative of a deceased owner and such person shall apply to be registered as proprietor in respect of such land it shall not be necessary for the District Land Registrar to cause notices of such application to be advertized served or otherwise published nor to wait any period before registering such applicant as proprietor.

Justices Protection Act Amendment Bill.

REASONS assigned by the House of Representatives for disagreeing to the Amendment of the Legislative Council in clause three of the Justices Protection Act Amendment Bill:—

- (1.) That compelling a plaintiff to give security for a sum to be fixed by the Judges of the Supreme Court would in effect debar men of moderate means from obtaining redress for wrongful imprisonment or conviction by Justices of the Peace.
- (2.) That in fixing the security to be given by Justices of the Peace at the same sum as plaintiffs' is only an act of fairness but if the Legislative Council would consent to dispense with security for costs it is probable that the House of Representatives would consent to abandon same.