

# WILLS.

7 Will. IV. §  
1 Vict., c. 26.

7 Will. IV. and 1 Vict., c. 26.

## *The Statute of Wills.*

AN ACT for the Amendment of the Laws with respect to  
Wills. [3rd July, 1837.]

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Meaning of  
certain words  
in this Act.

1. The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say,—

“Will.”

The word “will” shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled “An Act for taking away the Court of Wards and Liveries, and Tenures *in Capite* and by Knight’s Service, and Purveyance, and for settling a Revenue upon His Majesty in lieu thereof,” or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled “An Act for taking away the Court of Wards and Liveries, and Tenures *in Capite* and by Knight’s Service,” and to any other testamentary disposition; and

“Real estate.”

The words “real estate” shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right,

customary, or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and

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The words "personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and

"Personal estate."

Every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and

Number.

Every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Gender.

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3. . . . It shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir at law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator;

All property may be disposed of by will,

And . . . the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary, or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act, if this Act had not been made;

comprising customary freeholds and copyholds, without surrender and before admittance, and also such of them as cannot now be devised;

And also to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary, or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament;

estates *pur autre vie*;

And also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will ;

contingent  
interests ;

And also to all rights of entry for conditions broken, and other rights of entry ;

rights of  
entry ;

And also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

and property  
acquired after  
execution of  
the will.

As to fees and  
fines payable  
by devisees of  
customary  
and copyhold  
estates.

4. Provided always . . . . that where any real estate of the nature of customary freehold or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator :

Provided also that, where the testator was entitled to have been admitted to such real estate, and might, if he had been admitted thereto, have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money, as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering, or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will ;

All which stamp duties, fees, fine, or sums of money due as aforesaid shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of

such person so entitled or claiming to be entitled to the same real estate as aforesaid. 7 Will. IV. & 1 Vict., c. 26.

5. . . . When any real estate of the nature of customary freehold or tenant right, or customary, or copyhold, shall be disposed of by will, the lord of the manor or reputed manor of which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; Wills or extracts of wills of customary freeholds and copyholds to be entered on the court rolls;

And when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will;

And when any such real estate could not have been disposed of by will if this Act had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall as against the devisee of such estate have the same remedy for recovering and enforcing such fine, heriot, dues, duties, and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent. and the lord to be entitled to the same fine, &c., when such estates are not now devisable as he would have been from the heir in case of descent.

6. . . . If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee-simple; Estates *pur autre vie*.

And in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary, or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant;

And if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

7. . . . No will made by any person under the age of twenty-one years shall be valid. No will of a person under age valid;

8. Provided also . . . that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act. nor of a *feme covert*, except such as might now be made.

9. . . . . No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, that is to say,—

Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time.

It shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed.

10. . . . . No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required;

And every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Soldiers and mariners' wills excepted.

11. Provided always . . . . . that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.<sup>1</sup>

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Publication not to be requisite.

13. . . . . Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Will not to be void on account of incompetency of attesting witness.

14. . . . . If any person who shall attest the execution of a will shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Gifts to an attesting witness to be void.

15. . . . . If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void;

And such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or

<sup>1</sup> See Statute of Frauds, s. 22, ante, p. 177.

invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will. 7 Will. IV. & 1 Vict., c. 26.

16. . . . In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof. Creditor attesting to be admitted a witness.

17. . . . No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof. Executor to be admitted a witness.

18. . . . Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions). Will to be revoked by marriage.

19. . . . No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. No will to be revoked by presumption.

20. . . . No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

21. . . . No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will ; No alteration in a will shall have any effect unless executed as a will.

But the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

No will re-  
voked to be  
revived other-  
wise than by  
re-execution  
or a codicil to  
revive it.

**22.** . . . . No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same;

And when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

A devise not  
to be rendered  
inoperative by  
any subse-  
quent convey-  
ance or act.

**23.** . . . . No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

A will shall  
be construed  
to speak from  
the death of  
the testator.

**24.** . . . . Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

A residuary  
devise shall  
include estates  
comprised in  
lapsed and  
void devises.

**25.** . . . . Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will.

A general  
devise of the  
testator's  
lands shall  
include copy-  
hold and  
leasehold as  
well as free-  
hold lands.

**26.** . . . . A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

A general gift  
shall include  
estates over  
which the tes-  
tator has a  
general power

**27.** . . . . A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any

real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will;

7 Will. IV. &  
1 Vict., c. 26.  
of appoint-  
ment.

And in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

**28.** . . . . Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee-simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

A devise without any words of limitation shall be construed to pass the fee.

**29.** . . . . In any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise :

The words "die without issue," or "die without leaving issue," shall be construed to mean "die without issue living at the death."

Provided that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

**30.** . . . . Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee-simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.

**31.** . . . . Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate or in the surplus rents and profits thereof shall not be given to any

Trustees under an unlimited devise, where the trust may en-



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dure beyond  
the life of a  
person benefi-  
cially entitled  
for life, to  
take the fee.

person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee-simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Devises of  
estates tail  
shall not  
lapse.

**32.** . . . . . Where any person to whom any real estate shall be devised for an estate tail or an estate in *quasi* entail shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Gifts to child-  
ren or other  
issue who  
leave issue  
living at the  
testator's  
death shall  
not lapse.

**33.** . . . . . Where any person, being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Act not to extend to wills made before 1838, nor to estates *pur autre vie* of persons who die before 1838.

**34.** . . . . . This Act shall not extend to any will made before the first day of January, one thousand eight hundred and thirty-eight. . . . .

Every will re-executed or republished, or revived by any codicil, shall for the purposes of this Act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived. . . . .

This Act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of January, one thousand eight hundred and thirty-eight.

Act not to extend to Scotland.

**35.** . . . . . This Act shall not extend to Scotland.  
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