



CHAPTER 193.

An Act for the Consolidation and Amendment of the Laws with respect to Wills.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short Title.

1. This Act may be cited as the “Wills Act.”

Short title.

2. 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:—

Interpretation.

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, and to any other testamentary disposition; and

“Will.”

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

“Real estate.”

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. 7 Will. 4 & 1 Vict., c. 26, s. 1.

“Personal estate.”

All property may be disposed of by will.

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;

Real estate, customary freehold, and tenant right.

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 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;

Estates pur autre vie.

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;

Contingent and executory interests.

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;

Rights of entry.

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

Property acquired subsequently to execution of will.

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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 3.

Estates pur autre vie.

4. 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;

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 Will. 4, & 1 Vict. (Imp.), c. 26, s. 6.

5. No will made by any person under the age of twenty-one years shall be valid. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 7. No will of a person under age valid.

6. 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 testator in 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 and 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 9.

7. Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the meaning of this Act, as explained by this Act, if the signature shall be so placed at, or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; When signature to a will shall be deemed valid.

And no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment:

But no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made. 15 & 16 Vict. (Imp.), c. 24, s. 1.

Appointments by will to be executed like other wills ;

and to be valid although other required solemnities are not observed.

Soldiers' and mariners' wills excepted.

Will to be valid without publication.

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

Gift to an attesting witness to be void.

Creditor attesting to be admitted a witness.

8. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 10.

9. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 11.

10. Every will executed in manner hereinbefore required shall be valid without any other publication thereof. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 13.

11. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 14.

12. 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 invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 15.

13. In case by 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 16.

14. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 17.

Executor to be admitted a witness.

15. 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). 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 18.

Will to be revoked by marriage.

16. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 19.

No will to be revoked by presumption.

17. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 20.

No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

18. 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 execution 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 21.

19. 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 shewing an intention to revive the same;

No will revoked to be revived otherwise than by re-execution or a codicil to revive it.

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 be shown. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 22.

A devise not to be rendered inoperative by any subsequent conveyance or act.

20. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 23.

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

21. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 24.

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

22. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 25.

A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.

23. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 26.

A general gift shall include estates over which the testator has a general power of appointment.

24. 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 :

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. 7 Will. 4, & Vict. (Imp.), c. 26, s. 27.

25. 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 by will in such real estate, unless a contrary intention shall appear by the will. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 28.

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

26. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 29.

27. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 30.

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

28. 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 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 31.

Trustees under unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.

29. 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,

Devises of estates tail shall not lapse.

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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 32.

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

30. 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. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 33.

Act not to extend to wills made before 1838.

31. 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 re-published, 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 re-published, or revived. 7 Will. 4, & 1 Vict. (Imp.), c. 26, s. 34.

Proof of execution of will, codicil, deed, or instrument by declaration of attesting witness.

32. It shall and may be lawful to and for any attesting witness to the execution of any will or codicil, deed, or instrument in writing, and to and for any other competent person, to verify and prove the signing, sealing, publication or delivery, of any such will, codicil, deed, or instrument in writing, by declaration in writing; and every Justice of the Peace, Notary Public, or other officer duly by law empowered in that behalf, shall be and is hereby authorised and empowered to administer or receive such declaration. 5 & 6 Will. 4, c. 62, s. 16.

VICTORIA, B. C.:

Printed by RICHARD WOLFENDEN, Printer to the Queen's Most Excellent Majesty
1897.