

BILL

No. 14 of 1928.

An Act respecting the Devolution of the Real Property of Deceased Persons.

(Assented to _____, 1928.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Devolution of Real Property Act.*"

2. In this Act, unless the context otherwise requires—

- (a) "Lunatic" shall indicate an idiot, and a person of unsound mind;
- (b) "Court" shall mean the Supreme Court of Alberta, or a judge thereof;
- (c) "Personal representative" shall mean the executor, original or by representation, or administrator for the time being of a deceased person.

3. Section 4 of this Act shall apply in cases of death occurring after the eighth day of May, 1906, and the other sections shall insofar as they effect any change in the law apply only in cases of death after the commencement of this Act.

4.—(1) Real property to which a deceased person was entitled for an interest not ceasing on his death shall on his death, notwithstanding any testamentary disposition, devolve upon and become vested in his personal representative from time to time as if it were personal property vesting in him, and shall be dealt with and distributed by him as personal estate.

(2) A testator shall be deemed to have been entitled at his death to any interest in real property passing under any gift contained in his will which operates as an appointment under a general power to appoint by will.

(3) The personal representative shall be the representative of the deceased in regard to his real property to which he was entitled for an interest not ceasing on his death as well as in regard to his personal property.

(4) Probate and letters of administration may be granted in respect of real property only, although there is no personal property.

5. Subject to the powers, rights, duties and liabilities hereinafter mentioned, the personal representative of a deceased person shall hold the real property as trustee for the persons by law beneficially entitled thereto, and those persons shall have the same right to require a transfer of real property as persons beneficially entitled to personal property have to require a transfer of such personal property.

6. Subject to the provisions hereinafter contained, all enactments and rules of law, and all jurisdiction of any court with respect to the appointment of administrators or to probate or letters of administration, or dealings before probate in the case of personal property, and with respect to costs and other matters in the administration of personal property in force before the commencement of this Act, and all powers, duties, rights, equities, obligations and liabilities of a personal representative in force at the commencement of this Act with respect to personal property, shall apply and attach to the personal representative and shall have effect with respect to real property vested in him.

7. Without prejudice to the rights and powers of a personal representative, the appointment of a representative in regard to real property shall not, save as hereinafter provided, affect—

- (a) any rule as to marshalling or as to administration of assets;
- (b) the beneficial interest in real property under any testamentary disposition;
- (c) any mode of dealing with any beneficial interest in real property or the proceeds of the sale thereof;
- (d) the right of any person claiming to be interested in the real property to take proceedings for the protection or recovery thereof against any person other than the personal representative.

8. In the administration of the assets of a deceased person his real property shall be administered in the same manner, subject to the same liabilities for debts, costs and expenses, and with the same incidents, as if it were personal property:

Provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable, as between different beneficiaries, in or toward the payment of funeral and testamentary expenses, debts or legacies, or the liability of real property to be charged with payment of legacies.

9. When any part of the real property of a deceased person vests in his personal representative under this Act, the personal representative, in the interpretation of any Act of this Legislature or in the construction of any in-

strument to which the deceased was a party or under which he was interested, shall, while the estate remains in the personal representative be deemed in law the heir of the deceased, as respects such part, unless a contrary intention appears; but nothing in this section shall affect the beneficial right to any property or the construction of words of limitation of any estate in or by any deed, will or other instrument.

10.—(1) At any time after the date of probate or letters of administration, the personal representative may convey the real property to any person entitled thereto, and may make the conveyance either subject to a charge for the payment of any money which the personal representative is liable to pay, or without any such charge; and on the conveyance being made subject to a charge for all moneys (if any) which the personal representative is liable to pay, all liabilities of the personal representative in respect of the real property shall cease, except as to any acts done or contracts entered into by him before such conveyance.

(2) At any time after the expiration of one year from the date of probate or of letters of administration, if the personal representative has failed, on the request of the person entitled to any real property, to convey the real property to that person, the Court may, if it thinks fit, on the application of that person and after notice to the personal representative, order that the conveyance be made, and in default may make an order vesting the real property in such person as fully and completely as might have been done by a conveyance thereof from the personal representative.

(3) If, after the expiration of such year, the personal representative has failed, with respect to the real property or any portion thereof, either to convey the same to a person entitled thereto or to sell and dispose of it, the Court may, on the application of any person beneficially interested, order that the real property or portion be sold on such terms and within such period as may appear reasonable; and, on the failure of the personal representative to comply with such order, may direct a sale of the real property or portion upon such terms of cash or credit, or partly one and partly the other, as may be deemed advisable.

11. The personal representative may sell the real property for the purpose not only of paying debts, but also of distributing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and it shall not be necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only.

12.—(1) Subject to the provisions hereinafter contained, no sale of real property for the purpose of distribution only shall be valid as respects any person beneficially interested, unless he concurs therein.

(2) Where, in the case of such a sale, a lunatic is beneficially interested or adult beneficiaries do not concur in the sale, or where under a will there are contingent interests or interests not yet vested, or the persons who may be beneficiaries are not yet ascertained, the Court may, upon proof satisfactory to it that such sale is in the interest and to the advantage of the estate of the deceased and the persons beneficially interested therein, approve such sale, and any sale so approved shall be valid as respects such contingent interests and interests not yet vested, and shall be binding upon such lunatic, non-concurring persons and beneficiaries not yet ascertained.

(3) If an adult accept a share of the purchase money, knowing it to be such, he shall be deemed to have concurred in the sale.

13. No sale, where an infant is interested, shall be valid without the written consent or approval of the Official Guardian, or, in the absence of such consent or approval, without an order of the Court.

14. The personal representative may, with the concurrence of the adult persons beneficially interested, with the approval of the Official Guardian (or other proper officer) on behalf of infants, and, in the case of a lunatic, with the approval of the administrator of estates of the mentally incompetent, if any infants or lunatics are so interested, divide or partition and convey the real property of the deceased person, or any part thereof, to or among the persons beneficially interested.

15.—(1) The personal representative may, from time to time, subject to the provisions of any will affecting the property—

- (a) lease the real property or any part thereof, for any term not exceeding one year;
- (b) lease the real property or any part thereof, with the approval of the Court, for a longer term;
- (c) raise money by way of mortgage of the real property or any part thereof, for the payment of debts, or for payment of taxes on the real property to be mortgaged, and, with the approval of the Court, for the payment of other taxes, the erection, repair, improvement or completion of buildings, or the improvement of lands, or for any other purpose beneficial to the estate.

(2) Where infants or lunatics are interested, the approvals or order required by sections 12 and 13 in case of a

sale shall be required in the case of a mortgage, under clause (c) of subsection (1) of this section, for payment of debts or payment of taxes on the real property to be mortgaged.

16.—(1) A person purchasing real property in good faith and for value from the personal representative, or from a person beneficially entitled thereto to whom the same has been conveyed by the personal representative, shall hold the same freed and discharged from any debts or liabilities of the deceased owner except such as are specifically charged thereon otherwise than by his will, and, where the purchase is from the personal representative, freed and discharged from all claims of the persons beneficially interested.

(2) Real property which has been conveyed by the personal representative to a person beneficially entitled thereto, shall continue to be liable to answer the debts of the deceased owner so long as it remains vested in such person, or in any person claiming under him not being a purchaser in good faith and for value, as it would have been if it had remained vested in the personal representative, and in the event of a sale or mortgage thereof in good faith and for value by such person beneficially entitled he shall be personally liable for such debts to the extent to which such real property was liable when vested in the personal representative, but not beyond the value thereof.

17. Where there are two or more personal representatives, a conveyance, mortgage, lease or other disposition of real property devolving under this Act shall not be made without the concurrence therein of all such representatives or an order of the Court; save that where probate is granted to one or some of two or more persons named as executors whether or not power is reserved to the other or others to prove, any conveyance, mortgage, lease or other disposition of the real property may be made by the proving executor or executors for the time being, without an order of the Court, and shall be as effectual as if all the persons named as executors had concurred therein.

18. The rights and immunities conferred by this Act upon personal representatives are in addition to, and not in derogation of, the powers conferred by any other Act, or by the will.

19. Nothing in this Act shall alter any duty payable in respect of real property or impose any new duty thereon.

20. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

21. This Act shall come into force on.....

No. 14.

SECOND SESSION
SIXTH LEGISLATURE
18 GEORGE V
1928

BILL

An Act respecting the Devolution of
the Real Property of Deceased
Persons.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. LYMBURN

EDMONTON:
W. D. McLEAN, ACTING KING'S PRINTER
A.D. 1928