SUPPLEMENT

TO THE

NEW SOUTH WALES

GOVERNMENT GAZETTE

OF WEDNESDAY, AUGUST 21, 1839.

Published by Authority.

SATURDAY, AUGUST 24, 1839.

ANNO TERTIO
VICTORIÆ REGINÆ.
No. 4.

By His Excellency Sir George Gipps, Knight, Captain General and Govenor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council.

"*An Act to render references to Arbitration "more effectual.*"

WHEREAS, by a Statute passed in the Imperial Parliament, in the third and fourth years of the reign of His late Majesty, King William the Fourth, intituled, "*An Act for the further amendment of the Law and the better advancement of Justice,*" certain provisions are made for the purpose of rendering references to Arbitration more effectual; and whereas it is expedient that the said provisions should be adopted and brought into legal operation in the Colony of New South Wales:

Submission to Arbitration by Rule of Court &c., not to be revocable without leave of the Court.

Be it therefore enacted, by His Excellency the Governor thereof, with the advice of the Legislative Council, that the power and authority of any arbitrator or umpire, appointed by, or in pursuance of, any Rule of Court, or Judge's Order, or order of *Nisi Prius*, in any action now brought, or which shall be hereafter brought, or by, or in pursuance of, any submission to reference containing an Agreement that such submission shall be made a rule of the Supreme Court of New South Wales, shall not be revocable by any party to such reference, without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a Judge of the said Supreme Court; and the arbitrator or arbitrators or umpire, shall and may and is, or are hereby required to proceed with the reference, notwithstanding any such revocation, and to make such award, although the person making such revocation shall not afterwards attend the reference; and that the said Supreme Court, or any Judge thereof, may from time to time enlarge the term for any such arbitrator or arbitrators, or umpire, making his or their award.

(Power to compel attendance of witnesses.)

II. And be it enacted, That when any reference shall have been made by any such rule or order as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the Court by which such rule or order shall be made, or which shall be mentioned in such agreement, or for any Judge, by rule or order to be made for that purpose, to command the attendance and examination of any person to be named, or the production of any document to be mentioned in such rule or order, and the disobedience to any such rule or order shall be deemed a contempt of Court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire, before whom the attendance is required, shall also be served either together with or after the service of such rule or order: Provided always, that every person whose attendance shall be so required shall be entitled to the like conduct-money, and payment of expenses, and for loss of time, as for and upon attendance at any trial: Provided also, that the application made to such Court or Judge for such rule or order, shall set forth the particular county, district, or place in said Colony where such witness is residing at the time, or satisfy such Court or Judge that such person cannot be found: Provided also, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days to be named in such order.

(Powers for the arbitrators under a rule of Court to administer an oath.)

III. And be it enacted, That when in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission shall be made a rule of Court, it shall be

ordered or agreed, that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrators or umpire, or any one arbitrator, and he or they is, or are hereby authorised and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending, shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly.

GEORGE GIPPS.

Passed the Legislative Council, this thirtieth day of July, One thousand eight hundred and thirty-nine.

WM. MACPHERSON,
Clerk of Councils.

ANNO TERTIO.

VICTORIÆ REGINÆ.

No. 5.

By His Excellency Sir George Gipps, Knight, Captain General and Governor-in-Chief of the Territory of New South Wales, and its Dependencies, and Vice-Admiral of the same with the advice of the Legislative Council.

"An Act for adopting a certain Act of "Parliament, intituled 'An Act for the "'Amendment of the Laws with respect "'to Wills,' in the Administration of "Justice in New South Wales, in like "manner as other Laws of England are "applied therein."

WHEREAS, a certain Act of Parliament was passed in the year one thousand eight hundred and thirty-seven, intituled 7 W. IV., and 1 Vict., ch. 26. "An Act for the Amendment of the Laws with respect to Wills;" and whereas it is expedient to adopt and apply the said recited Act of Parliament in the Administration of Justice in New South Wales:

Adopted and applied in the administration of Justice in New South Wales.

Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, that the said recited Act of Parliament shall be, and the same is hereby, adopted and directed to be applied in the Administration of Justice in the said Colony and its dependencies, from and after the time hereinafter mentioned, in like manner as other laws of England are therein applied.

(Commencement of Act.)

II. And whereas it is expedient that the said recited Act of Parliament should not commence or take effect in the Colony of New South Wales, until the first day of January next ensuing: Be it enacted, that the said recited Act of Parliament shall not commence or take effect in the Colony aforesaid, before the first day of January, one thousand eight hundred and forty; and that every clause and provision in the said recited Act, shall, on, from, and after, the said day of January, have only the same effect in the Colony of New South Wales, as the same have had in Her Majesty's kingdom of England, from and after the first day of January one thousand eight hundred and thirty-eight.

GEORGE GIPPS.

Passed the Legislative Council, this sixth day of August, One thousand eight hundred and thirty-nine.

WM. MACPHERSON,
Clerk of Councils

(ACT OF PARLIAMENT REFERRED TO)

ANNO PRIMO

VICTORIÆ REGINÆ.

Cap. XXVI.

"An Act for the Amendment of the Laws "with respect to Wills. (3d July, 1837")

Meaning of certain words in this Act.

BE it enacted, by the Queen's Most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that 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,) 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 Knights 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 Knights Service*, and to any other testamentary disposition; and 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 the words "personal estate," shall extend to leasehold estates, and other chattels real, and also to monies, 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 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 every word importing the mascu-

line gender only, shall extend and be applied to a female as well as a male.

(Repeal of the Statute, 32 H. 8., c. 1., and 34 and 35 H. 8., c. 5.)

II. And be it further enacted, That an Act passed in the thirty-second year of the reign of King Henry the Eighth, intituled, *The Act of Wills, wards, and primer seisins*, whereby a man may devise two parts of his land, and also an Act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled, *The Bill concerning the explanation of Wills;* and also an Act passed in the Parliament of *Ireland*, in the tenth year of the reign of King *Charles* the First, intituled, *An Act how lands, tenements, &c., may be disposed by Will or otherwise, and concerning wards and primer seisins;* and also so much of an Act passed in the twenty-ninth year of the reign of King *Charles* the Second, intituled, *An Act for the prevention of frauds and perjuries*, and of an Act passed in the Parliament of *Ireland*, in the seventh year of the reign of King *William* the Third, intituled, *An Act for prevention of frauds and perjuries*, as relates to Devises or Bequests of Lands or Tenements, or to the revocation or alteration of any devise in writing, of any Lands, Tenements, or Hereditaments, or any clause thereof, or to the devise of any estate *pur autre vie*, or to any such estate being assets, or to nuncupative wills, or to the repeal, altering or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise, or bequest therein; and also so much of an Act passed in the fourth and fifth years of the reign of Queen *Anne*, intituled, *An Act for the amendment of the Law and the better advancement of justice*, and of an Act passed in *the Parliament of Ireland*, in the sixth year of the reign of Queen *Anne*, intituled, *An Act for the amendment of the Law, and the better advancement of justice*, as relates to witnesses to nuncupative wills; and also so much of an Act passed in the fourteenth year of the reign of King *George* the Second, intituled, *An Act to amend the Law concerning common recoveries, and to explain and amend an Act made in the twenty-ninth year of the reign of King* Charles *the Second*, intituled, *An Act for prevention of frauds and perjuries*, as relates to estates, *pur autre vie;* and also an act passed in the twenty-fifth year of the reign of King *George* the Second, intituled, *An Act for avoiding and putting an end to certain doubts and questions relating to the attestation of Wills and Codicils concerning Real Estates in that part of* Great Britain *called* England, *and in His Majesty's colonies and plantations in* America, except so far as relates to His Majesty's colonies and plantations in *America*; and also an Act passed in the Parliament of *Ireland* in the same twenty-fifth year of the reign of King *George* the Second, intituled, *An Act for the avoiding and putting an end to certain doubts and questions relating to the attestations of Wills and Codicils concerning real estates;* and also an Act passed in the fifty-fifth year of the reign King of *George* the Third, intituled, *An Act to remove certain difficulties in the disposition of copyhold estates by Will*, shall be and the same are hereby repealed, except so far as the same Acts, or any of them respectively, relate to any Wills or estates *pur autre vie* to which this Act does not extend.

(All property may be disposed of by Will.)

III. And be it further enacted, That 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; and that 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; 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; 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; and also to all rights of entry for conditions broken, and other 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.

(As to the fees and fines payable by devisees of customary and copyhold Estates.)

IV. Provided always, and be it further enacted, 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 monies 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 entiled or claiming to be entitled to the same real estate as aforesaid.

(Wills of customary freeholds and copyholds to be entered on the Court Rolls; 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.)

V. And be it further enacted, That when any Real Estate of the nature of customary freehold, or tenanat 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; 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 enti... to for recovering and enforcing the same from or against the customary heir in case of a descent.

(Estates "pur autre vie.")

VI. And be it further enacted, That 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.

(No Will of a minor valid.)

VII. And be it further enacted, That no Will made by any person under the age of twenty-one years shall be valid.

(Nor of a femme covert.)

VIII. Provided also, and be it further enacted, 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.

(Every Will to be in writing, and signed in the presence of two witnesses.)

IX. And be it further enacted, That no Will shall be valid, unless it shall be in writing, and executed in manner hereinafter mentioned; (that is to say) 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, &c.)

X. And be it further enacted, That 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.

(Soldier's and Mariner's Wills excepted.)

XI. Provided always, and be it further enacted, 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.

(Act not to affect provisions of 11 G. IV., and 1 W. IV., c. 20, with respect to Wills of petty officers, &c.)

XII. And be it further enacted, That this Act

shall not prejudice or affect any of the provisions contained in an Act passed in the eleventh year of the reign of His Majesty, King *George* the Fourth, and the first year of the reign of His late Majesty King *William* the Fourth, intituled, "*An Act to amend and consolidate the Laws relating to the pay of the Royal Navy*, respecting the Wills of petty officers and seamen in the royal navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other monies payable in respect of services in Her Majesty's navy.

(Publication not to be requisite.)

XIII. And be it further enacted, That every Will executed in manner hereinbefore required, shall be valid, without any other publication thereof.

(Will not void by incompetency of witness.)

XIV. And be it further enacted, that 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.)

XV. And be it further enacted, That 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.

(Creditor attesting to be admitted a witness.)

XVI. And be it further enacted, That 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 executon 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.

(Executor to be admitted a witness.)

XVII. And be it further enacted, That 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.

(Will to be revoked by marriage.)

XVIII. And be it further enacted, That 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).

(No will to be revoked by presumption.)

XIX. And be it further enacted, That no will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

(In what cases wills may be revoked.)

XX. And be it further enacted, That 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 alteration in a will shall have any effect unless executed as a will.)

XXI. And be it further enacted, that 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 exeçuted in like manner as hereinbefore is required for the execution of the 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.

(How revoked will shall be revived.)

XXII. And be it further enacted, That 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; 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.

(When a devise not to be rendered inoperative, &c.)

XXIII. And be it further enacted, That 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 to speak from the death of the testator.)

XXIV. And be it further enacted, That 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.

(What a residuary devise shall include.)

XXV. And be it further enacted, That, 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.

(What a general devise shall include)

XXVI. And be it further enacted, that 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.

(What a general gift shall include.)

XXVII. And be it further enacted, that 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.

(How a devise without words of limitation shall be construed.)

XXVIII. And be it further enacted, that 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.

(How the words "die without issue," or "die without leaving issue," shall be construed.)

XXIX. And be it further enacted, That 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: 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.

(No Devise to Trustees or Executors, except &c., shall pass a chattel interest.)

XXX. And be it further enacted, that 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.

(Trustees under an unlimited devise, &c., to take the fee.)

XXXI. And be it further enacted, that 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.

(Devises of estate tail shall not lapse.)

XXXII. And be it further enacted, that 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 children or other issue who leave issue living at the testator's death shall not lapse.)

XXXIII. And be it further enacted, that 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 persons 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.

(To what Wills and Estates this Act shall not extend.)

XXXIV. And be it further enacted, that this

Act shall not extend to any Will made before the first day of January, one thousand eight hundred and thirty eight, and that 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, re-published, or revived; and that 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.

(Not to Scotland.)

XXXV. And be it further enacted, That this Act shall not extend to *Scotland*.

(Act may be amended.)

XXXVI. And be it enacted, That this Act may be amended, altered or repealed, by any Act or Acts to be passed in this present Session of parliament.

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