

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Plomley  
v. Shepherd, from the Supreme Court of New  
South Wales ; delivered January 28th, 1891.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

*[Delivered by Lord Watson.]*

THIS is a short, and as it appears to their Lordships, a very plain case. It turns upon the construction of two clauses in the New South Wales Act, No. 20 of the 26th Victoria, which is entitled, "An Act to alter the succession to Real Estate in cases of Intestacy." Stripped of unnecessary details the material facts are these. Ann Shepherd, or Goody, a married lady, died in 1866 possessed of a ninth share of a landed estate. She was survived by her husband, who, until his death in 1870, enjoyed a life rent tenancy by curtesy of his wife's ninth share. The proceeds of the estate, which has been converted, but not so as to affect in any way the rule of succession applicable to it, are claimed on the one side by the Appellant, who is assignee of the heir-at-law of the lady, and on the other side by the administrator of her personal estate.

Which of the two parties is entitled to the fund is a question depending entirely upon the construction of the Act. In considering the clauses which have a direct bearing upon the question, it is proper to keep in view that the purpose of the Legislature, as explained in the preamble of the Act, was to alter the rule

then in force, by which upon the death of an intestate owner his land passed to his heir-at-law. The first section of the statute simply declares that "all land which by the operation of the law " relating to real property now in force would " upon the death of the owner intestate in " respect of such land pass to his heir-at-law " shall instead thereof pass to and become vested " in his personal representatives." It makes no provision with regard to the manner of administration. Reference is made at the end of the clause to the descent or vesting of chattel real property, not for the purpose of limiting the enactment, which applies to all lands without exception, but simply for the purpose of indicating the mode in which, and the effect to which, land is to vest in the personal representative. The second clause of the Act is the important one. It provides in the first place that lands held in trust or by way of mortgage passing to personal representatives shall be subject to the trusts and equities which previously affected them, in the same manner as if they had descended to the heir, and then declares that "all other lands so " passing shall be included by the administrator " in his inventory and account and be disposable " in like manner as other personal assets " without distinction as to order of application " for payment of debts or otherwise."

That direction applies to all land vested by virtue of section 1 in the personal administrator other than land which was held by the deceased in trust or by way of mortgage; and the combined effect of the two clauses is to give all land which previously descended to the heir to the next of kin of the predecessor. But there follows a proviso which qualifies that enactment, and the Appellant contends that the effect of the proviso is to restore to the

heir-at-law the right of succession of which the enactment deprives him, whenever the intestate is a lady who, at the time of her death, was the wife of a living husband. Their Lordships are unable to accept that interpretation of the proviso. It is in these terms: "Provided that nothing herein contained shall give to any husband on the death of his wife intestate any greater interest in the real estate of his wife or in the produce thereof upon sale than a tenancy for life by the curtesy." That proviso shows conclusively that the provisions of the Act which precede it were intended by the Legislature to apply in terms to the case of land left by an intestate married woman whose husband survives her. It recognises the application of the statute, and its plain object was to prevent the husband taking a larger interest than would have fallen to him if the rule of succession had not been altered. Had the proviso been omitted, the surviving husband would have taken, not a right of curtesy, which is a bare estate for life, but a right of fee in the land or its proceeds. To prevent that result, the Legislature has provided that his right shall be limited, but their Lordships find it impossible to infer from that limitation that the Legislature intended the remainder which is not given to the husband to lose its character of personal assets divisible among the next of kin, and to revert to the heir-at-law. There is not a single expression in the Act which lends plausibility to a suggestion of that kind. The proviso was introduced just because the effect of the enactment was to make land moveable for all purposes of intestate succession, and except in so far as the proviso enacts otherwise it must so remain. But the proviso does not deal at all with the character of land *quoad* succession. It simply

limits the interest of the husband in that which has already been made distributable as personalty.

Their Lordships will accordingly humbly advise Her Majesty that the Appeal ought to be dismissed. The Appellant must bear the costs of the Appeal.