

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Successions (Personal Estates of Married Persons) (Sark) Law, 1975

(Registered on the Records of the Island of Guernsey
on the 3rd day of June, 1975.)



1975.

VII
1975

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 3rd day of June, 1975, before John Henry Loveridge, Esquire, C.B.E., Bailiff; present:— Claude Fortescue Nason, Stanley Walter Gavey, D'Arcy George Le Tissier, Esquires, Edward James Lainé, Esquire, C.B.E., D.F.C., Walter Francis Robin, Esquire, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Oliver Symons, Albert Richard McCartney Straw, Esquires, Frederick William Winslow Chandler, Esquire, D.S.O., D.F.C. and Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 16th day of April, 1975, ratifying a Projet de Loi of the Chief Pleas of the Island of Sark entitled "The Successions (Personal Estates of Married Persons) (Sark) Law, 1975", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Seneschal of Sark for registration on the records of that Island, of which Order in Council the tenor followeth:—

At the Court at Windsor Castle

The 16th day of April 1975

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 11th day of March 1975, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of Henry Parkin Bell, Esquire, Deputy Seigneur de Sercq, Maxwell Hyslop Maxwell, Esquire, M.B.E., T.D., Deputy Seneschal, and John Peter Guille, Esquire, Prévôt of the Island of Sark, setting forth:—

- ‘ 1. That in pursuance of their Resolution of the 3rd October 1973, the Chief Pleas of the Island of Sark, at a Meeting held on the 1st November 1974, approved a Bill or “Projet de Loi” entitled “The Successions (Personal Estates of Married Persons) (Sark) Law, 1975”.
2. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the Chief Pleas of Sark entitled “The Successions (Personal Estates of Married Persons) (Sark) Law, 1975” and to order that the same shall have force of law in the Island of Sark.’

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of the Law within the Island of Sark.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Bailiwick of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Bailiwick, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

N. E. Leigh

Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Successions (Personal Estates of Married Persons) (Sark) Law, 1975

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the third day of October, nineteen hundred and seventy-three, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Sark.

Disposal of
personal
estate by
will.

1. Subject to the provisions of section seven and section twelve of this Law, it shall be lawful for every person to dispose testamentarily of the personal estate belonging to him at the time of his death, other than that part thereof which his surviving spouse is entitled to take by virtue of the next following section and the *légitime* which his surviving issue are entitled to take by virtue of section three of this Law.

Right of
surviving
spouse.

2. Where a person dies leaving a husband or wife, the surviving husband or wife shall be entitled to take absolutely—

- (a) if the deceased is survived by any issue, one-third of the personal estate of the deceased; or
- (b) if the deceased is not survived by any issue, one-half of the personal estate of the deceased.

3.—(1) Where a person dies leaving issue, they shall be entitled to take absolutely— *Légitime of issue.*

- (a) if the deceased is survived by a husband or wife, one-third of the personal estate of the deceased, which shall be taken after the surviving spouse has taken his share by virtue of the last foregoing section; or
- (b) if the deceased is not survived by a husband or wife, one-half of the personal estate of the deceased;

so, however, that no issue shall be entitled to take by virtue of this section whose parent is living at the death of the deceased.

4.—(1) Where a person (hereafter in this section referred to as “the deceased”) dies leaving two or more children surviving him and no other issue having right by virtue of the last foregoing section to take the *légitime* in the succession to the personal estate of the deceased, the *légitime* shall be divided equally among those children. *Division of légitime and representation of predeceased children.*

(2) Where the deceased dies predeceased by his only child, who has left issue who survive the deceased, such issue who have the right by virtue of the last foregoing section to the *légitime* in the succession to the personal estate of the deceased shall take, through all degrees *per stirpes*, in equal shares if more than one, the whole of the *légitime*.

(3) Where the deceased is predeceased by any children (hereafter in this subsection referred to as “the predeceased children”), who have left issue who survive the deceased and who have the right by virtue of the last foregoing section to the *légitime* in the succession to the personal estate of the deceased together with any children of the deceased who have survived the deceased (hereafter

in this subsection referred to as "the surviving children"), the *légitime* shall be divided equally into a number of shares equal to the aggregate of the number of the predeceased children and the number of the surviving children and, of those shares, one shall be taken by each of the surviving children and one shall be taken, through all degrees *per stirpes*, by such issue of each of the predeceased children, if more than one in equal shares.

(4) Where the deceased dies predeceased by all his children, two or more of whom have left issue who survive the deceased and who have the right among them by virtue of the last foregoing section to the *légitime* in the succession to the personal estate of the deceased, the *légitime* shall be divided equally into a number of shares equal to the number of such predeceased children who have left such issue as aforesaid and, of those shares, one shall be taken, through all degrees *per stirpes*, by such issue of each of the predeceased children, if more than one in equal shares.

Making and
choosing
of lots.

5.—(1) Where the *légitime* in the succession to the personal estate of any person is to be divided between two or more persons, lots shall be chosen by the children of that person in order of seniority, first by the sons and then by the daughters; and the lots shall be made by the heir who comes last in such order of precedence.

(2) For the purposes of subsection (1) of this section the issue of any predeceased child representing that child by virtue of any of the provisions of the last foregoing section in the succession to the personal estate of any person shall take the same precedence which such child would have taken if he had survived that person; and if more than one and they fail to agree on the choice of lot, the elder or eldest of them shall make the choice of lot.

(3) The provisions of subsection (1) of this section shall apply in relation to the division of a *légitime* or any part thereof between the issue of any predeceased child as aforesaid as those provisions apply in relation to the division of a *légitime* between children.

6. Notwithstanding the foregoing provisions of this Law, the parent, grandparent or remoter ancestor (hereafter in this section referred to as "the testator") of any person may by will direct—

Power to direct by will that *légitime* or part thereof be held upon certain trusts.

(a) that the *légitime* or such part thereof as that person may be entitled to take in the succession to the personal estate of the testator by virtue of section three of this Law shall be held in trust to the intent that the net income thereof shall be paid to that person during his lifetime and that upon his death the capital shall be distributed between his heirs or legatees in all respects as if the *légitime* or such part thereof, as the case may be, had not been placed in trust; and

(b) that the *légitime* or such part thereof as that person, being a married woman, may be entitled to take in the succession to the personal estate of the testator by virtue of the said section three shall be held in trust to the intent that the net income thereof shall be paid to her during her marriage and that the capital be—

(i) if she survives her husband, transferred to her upon the death of her husband; or

(ii) if she predeceases her husband, distributed between her heirs or legatees upon her death.

Renuncia-
tion of
right of
surviving
spouse.

7.—(1) Where any person has by any settlement, contract or other instrument made before or after their marriage renounced the right which he may have to any part of the personal estate of his spouse by virtue of section two of this Law, it shall be lawful for his spouse to dispose testamentarily of that part of his personal estate.

(2) Where a wife has by any settlement, contract or other instrument made before the commencement of this Law (whether made before or after their marriage) renounced the right which she may have had to any part of the personal estate of her husband by virtue of the law in force in the Island of Sark before the commencement of this Law, it shall be lawful for her husband to dispose testamentarily of that part of his personal estate.

Adopted
persons.

8. For the purposes of this Law, an adopted person shall be treated as the child of the adopter born in lawful wedlock and not as the child of any other person.

Divorced
persons.

9. For the purposes of this Law, a person whose marriage has been dissolved or annulled by a decree granted under the Matrimonial Causes Law (Guernsey), 1939(a), or by a decree recognised as valid in the Bailiwick of Guernsey, shall not be treated as the husband or wife of the other party of the marriage.

Interpreta-
tion.

10.—(1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

(a) Ordres en Conseil Vol. XI, p. 318.

“adopted person” means a person adopted under an adoption order recognised as valid in the Island of Guernsey for the purposes of any enactment for the time being in force in that Island relating to successions to the personal estates of married persons;

“child”, in relation to any person, means the lawful descendants of that person in the first degree; “issue”, in relation to any person, means the lawful issue of that person however remote;

“*légitime*” means, in relation to the succession to the personal estate of any person who dies leaving issue, that part of his personal estate which his issue are entitled to take by virtue of section three of this Law;

“personal estate” means, in relation to the succession to the personal estate of any person, so much of the personal estate belonging to him at the time of his death as remains after provision is made for the satisfaction of all funeral, testamentary and administration expenses, debts and other liabilities of the estate of that person.

(2) Except where the context otherwise requires, any reference in this Law to any other enactment includes a reference to that enactment as amended, repealed or replaced by or under any other enactment.

(3) The Interpretation (Guernsey) Law, 1948(b), shall apply to the interpretation of this Law as it applies to the interpretation of a Guernsey enactment.

Repeal.

11. The Loi entitled "Loi relative à la Portion Disponible des Biens Meubles des Pères et Mères" registered on the records of the Island of Guernsey on the twenty-sixth day of October, eighteen hundred and seventy-two(c), shall cease to have effect in the Island of Sark.

Savings.

12.—(1) This Law shall not apply in relation to the succession to the personal estate of any person who died before the commencement of this Law.

(2) Nothing in this Law contained shall interfere with or affect any settlement, contract or other instrument made before the commencement of this Law respecting the property of a married woman.

Citation and commencement.

13.—(1) This Law may be cited as the Successions (Personal Estates of Married Persons) (Sark) Law, 1975.

(2) This Law shall come into force on the seventh day next following the date of the registration of this Law on the records of the Island of Guernsey.

R. H. VIDELO,

Her Majesty's Greffier.

(c) Ordres en Conseil Vol. II, p. 127.