

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Real Property (Succession) (Sark) Law, 1999

(Registered on the Records of the Island of Guernsey
on the 17th January, 2000.)



1999

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ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 17th day of January, 2000 before de Vic Graham Carey, Esquire, Bailiff; present:- John Richard Rowe Henry, David Charles Lowe, Esquires, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, David Michael Jory, Keith Bichard, O.B.E., Esquires, The Reverend Peter Gerald Lane and Michael John Wilson, Esquire, Jurats.

The Bailiff having this day placed before the Court a copy of an Order of Her Majesty in Council dated the 14th day of December, 1999 approving and ratifying a *Projet de Loi* of the Chief Pleas of the Island of Sark entitled "The Real Property (Succession) (Sark) Law, 1999", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procurer thereon, ORDERED:-

1. That the said Order in Council be registered on the records of this Island; and
2. 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 S n schal of Sark for registration on the records of that Island of which Order in Council the tenor followeth:-

At the Court at Buckingham Palace

The 14th day of December 1999

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 7th day of December 1999 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 a humble Petition of John Michael Beaumont, Seigneur of Sark, Lieutenant Colonel Reginald John Guille, M.B.E., Deputy Sénéchal of Sark, and Colin Francis John Guille, Deputy Prévôt, of the Island of Sark, setting forth: 1. That in pursuance of their Resolution of the 9th day of June 1999, the Chief Pleas of the Island of Sark, at a Meeting held on the 24th day of November 1999, approved a Bill or "Projet de Loi" entitled "The Real Property (Succession) (Sark) Law, 1999". 2. That the said Bill or "Projet de Loi" is as 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 Real Property (Succession) (Sark) Law, 1999", 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 Projet de Loi annexed thereto 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, and it is hereby ordered,

that the same shall have the force of 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.

A. K. Galloway

The Real Property (Succession) (Sark) Law, 1999

THE CHIEF PLEAS OF SARK, in pursuance of their Resolutions of the 9th day of June and the 24th day of November, 1999, 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.

Property to remain indivisible.

1. (1) The tenements and the freeholds shall, as hitherto, be and remain impartable and undivided.

(2) Nothing in subsection (1) derogates from -

- (a) the rights and powers of the Seigneur in respect of terres seigneuriales;
- (b) the provisions of the Law entitled "Aliénation de Terres dans l'Île de Sercq", registered on the 16th July, 1927^a.

Abolition of male preference.

2. Any rule of law or custom by or pursuant to which, for the purposes of succession to a property, a male person is preferred to a female person, is abolished.

Abolition of exclusion of illegitimate and adopted children.

3. (1) Any rule of law or custom by or pursuant to which, for the purposes of succession to a property, an illegitimate person is, by reason of his

^a Ordres en Conseil Vol. VIII, p. 153.

illegitimacy, distinguished from a legitimate person, is, subject to the provisions of paragraph 17 of the Schedule, abolished.

(2) Any rule of law or custom by or pursuant to which, for the purposes of succession to a property, an adopted person is excluded from the succession, is abolished; and accordingly, for those purposes, an adopted person shall be considered to be the child of the adopter born in lawful wedlock, and not the child of any other person.

Intestate succession to a property.

4. The provisions of the Schedule to this Law shall apply to the intestate succession to a property of a person dying after the date of the commencement of this Law.

Testamentary succession to a property.

5. A person who owns a property may lawfully give the property by will only in accordance with the provisions of sections 6, 7 and 8.

Wills of property by persons with descendants.

6. (1) A person who is survived by one or more descendants (a "**person with descendants**") who owns a property may, by will, give the property to any one person belonging to the class of persons mentioned in subsection (3).

(2) A person with descendants who owns more than one property may, by will, give all or any one or more of the properties to any one person belonging to the class of persons mentioned in subsection (3).

(3) The class of persons referred to in subsections (1) and (2) comprises the testator's descendants.

(4) Where a person, being a descendant of a testator to whom a property is given by the testator's will, dies in the testator's lifetime leaving descendants any of whom are living at the time of the testator's death, the gift shall not lapse but shall take effect as if the person had died immediately after the testator's death, unless a contrary intention appears in the will.

(5) A gift of a property pursuant to the provisions of subsection (1) or (2) shall, subject to the provisions of section 11(3), be unconditional; and any condition imposed in relation to the gift shall be void.

Wills of property by persons without descendants.

7. (1) A person who is not survived by any descendants (a "**person without descendants**") who owns a property may, by will, give the property to any one natural person.

(2) A person without descendants who owns more than one property may, by will, give all or any one or more of the properties to any one natural person.

(3) A gift of a property pursuant to the provisions of subsection (1) or (2) shall, subject to the provisions of section 11(3), be unconditional; and any condition imposed in relation to the gift shall be void.

Trusts for sale of property by persons without descendants.

8. (1) A person without descendants who owns one or more properties may, by will -

- (a) give all or any one or more of the properties to a person (the "**trustee for sale**") to be held on trust for sale; and

(b) direct that the net proceeds of sale shall be paid or applied to or for the benefit of any persons (the "**beneficiaries**") who shall be -

(i) identifiable by name; or

(ii) ascertainable by reference to a class or by reference to a relationship to another person;

and any such trust for sale shall, subject to the provisions of this section, be valid and enforceable by the Court in accordance with its terms.

(2) The expression "persons" in subsection (1)(b) includes charitable objects and charitable purposes.

(3) On the death of a trustee for sale, the property which is subject to the trust for sale created under this section (the "**trust property**") shall not vest in the heir of the trustee but shall vest in his successor trustee for sale or, where subsection (8) applies, in the Prévôt; and accordingly the heir of the trustee shall not, as such, have legal title to the trust property.

(4) A testator may by his will provide for the appointment of one or more successor trustees for sale, but so that at any one time there shall only be one such trustee.

(5) On the application of any person mentioned in subsection (15), and without prejudice to the generality of subsection (14), the Court may appoint a successor trustee for sale, who may be the Prévôt -

(a) if the existing trustee for sale dies, becomes incapable of acting or refuses, neglects or is unfit to act; or

(b) in the circumstances referred to in subsection (7).

(6) Only a natural person may be appointed as a trustee for sale.

(7) A trustee for sale may apply to the Court to be discharged from the trusts of a trust for sale created under this section, and the Court, before discharging him, may require an account of his trusteeship.

(8) If at any time after the death of a testator there arises a vacancy in the office of trustee for sale, the trust property shall vest in the Prévôt pending the appointment by the Court of a successor trustee.

(9) A trustee for sale shall act -

(a) in the utmost good faith and en bon père de famille;

(b) in accordance with the terms of the trust; and

(c) only in the interests of the beneficiaries.

(10) A trustee for sale may postpone, but shall not unreasonably delay, the sale of the trust property.

(11) Pending sale, and without prejudice to his other powers and duties, the trustee for sale may let the trust property.

(12) For the avoidance of doubt, where the trust property comprises or includes a tenement, the trustee for sale shall have and may exercise all the rights and powers as owner of the tenement, except that he shall not be entitled to a seat in the Chief Pleas.

(13) The interest of a beneficiary under a trust for sale created under this section shall be personal property.

(14) On the application of any person mentioned in subsection (15), the Court may -

- (a) make an order in respect of -
 - (i) the execution, administration or enforcement of a trust for sale created under this section;
 - (ii) a trustee for sale, including (without limitation) an order as to the exercise by him of his powers and duties or as to his appointment, conduct, remuneration or removal;
 - (iii) the beneficiaries;
 - (iv) the trust property, including (without limitation) an order as to the vesting, preservation or administration thereof;
- (b) make an order in respect of the validity or enforceability of a trust for sale created under this section;

- (c) rescind or vary an order made under this subsection, or make a new or further order.

(15) An application under subsection (5) or (14) may be made by Her Majesty's Procureur or Comptroller, a trustee for sale, a beneficiary or, with leave of the Court, any other person.

(16) Where the Court appoints or removes a trustee for sale under this section -

- (a) it may impose such requirements and conditions as it thinks fit, including requirements and conditions as to the vesting of the trust property; and
- (b) subject to the Court's order, a trustee for sale appointed by the Court has the same powers and duties, and may act in all respects, as if he had been originally appointed a trustee.

Wills of real and personal property.

9. A gift by will of real property shall not be invalid by reason only that the will also makes a gift of personal property.

Abolition of droit de douaire and franc veuvage.

10. (1) There are abolished-

- (a) the droit de douaire;
- (b) the droit de franc veuvage.

(2) Nothing in subsection (1) derogates from any droit de douaire or droit de franc veuvage-

- (a) which is subsisting on the date of the commencement of this Law; and
- (b) which has arisen as a result of the death of a spouse before that date;

and the rights of the widow or widower of that spouse thereunder are expressly preserved.

Right of enjoyment of surviving spouse in property.

11. (1) A surviving spouse shall have the lifetime enjoyment of one third of the property of his deceased spouse.

(2) The right of enjoyment mentioned in subsection (1) may be exercised by the surviving spouse over such part of the property as he may reasonably select.

(3) A person may by his will of a property impose reasonable conditions upon, respectively, his surviving spouse and the devisee concerning the repair, maintenance and insurance of the property in respect of which the right of enjoyment of his surviving spouse is exercised.

(4) Where, pursuant to the provisions of this Law, a property -

- (a) is given by will;
- (b) is inherited according to the rules of intestate succession; or

- (c) escheats to the Seigneur;

the property is taken subject to the provisions of this section.

Powers of Court in relation to right of enjoyment.

12. In the event of a dispute in respect of a right of enjoyment conferred by section 11 between the surviving spouse on whom the right is conferred and the owner of the property in respect of which the right is exercised, the Court may make such order as it thinks fit, including an order in respect of -

- (a) the part of the property in respect of which the right is exercised;
- (b) the respective rights and obligations of the surviving spouse and the owner.

Formalities for wills of property.

13. (1) A will of a property made in the Island of Sark shall be made in writing and signed by the testator in the presence of the Seneschal and the Greffier, both present at the same time, who shall attest the signature of the testator.

(2) A will of a property made in Guernsey shall be made subject to and in accordance with the same formalities as apply from time to time to the execution in Guernsey of a will of Guernsey real property.

(3) Nothing in this Law derogates from the provisions of the Law entitled "Des Formalités requises pour les Testaments d'Immeubles", registered on the 26th June, 1852^b or the Execution of Wills (Bailiwick of Guernsey) Law, 1994^c.

Registration of wills of property.

14. (1) At any time after the death of a testator, the devisee of a property under his will or the devisee's successor in title may apply to the Court for permission to register the will on the public records of the Island of Sark.

(2) Before granting permission under subsection (1), the Court shall be satisfied that the testator has died.

(3) The registration of a will of a property shall not affect -

- (a) the rights of others to or in respect of the property; or
- (b) the application of the principle "le mort saisit le vif".

Power of Chief Pleas to make Ordinances.

15. (1) The Chief Pleas may by Ordinance -

- (a) extend the class of persons mentioned in section 6(3) to include the spouse of a person with descendants;
- (b) amend section 11(1) by increasing the proportion of the property of a deceased person over which his surviving spouse shall have lifetime enjoyment;

^b Ordres en Conseil Vol. I, p. 212.

^c Ordres en Conseil Vol. XVI of 1994.

- (c) prescribe formalities for the making of wills of real property, and for that purpose amend or repeal any provision of section 13;
 - (d) amend or repeal any provision of section 18(2);
 - (e) amend or repeal any provision of the Schedule.
- (2) An Ordinance under this Law -
- (a) may be amended or repealed by a subsequent Ordinance hereunder;
 - (b) may include provision for any consequential, incidental, supplementary and transitional matters.

Power of Court to make rules of procedure, etc.

16. The Court may, from time to time, make rules, which shall not come into force unless and until approved by the Royal Court, regulating and prescribing -

- (a) the procedure, including the method of pleading, and the practice to be followed in the Court in all proceedings;
- (b) the means by which particular facts may be proved and the method by which evidence may be given in or in connection with any proceedings;
- (c) any other matters incidental to or relating to -

- (i) any such procedure and practice; or
- (ii) the administration of the Court or of the Court records.

Power of Court as to costs of proceedings.

17. (1) The costs of and incidental to all proceedings shall be in the discretion of the Court, and the Court shall have power to determine by whom (including a person not a party to the proceedings) and to what extent the costs are to be paid.

(2) The Court may, from time to time, make rules, which shall not come into force unless and until approved by the Royal Court, regulating and prescribing -

- (a) the fees payable to the Court and to the officers of the Court in respect of proceedings and any ministerial act or function of the Court or of the officers of the Court;
 - (b) the fees and expenses recoverable by a party in any proceedings where costs are awarded to that party under subsection (1).
- (3) In subsections (1) and (2)(b), "**costs**" includes -
- (a) allowances payable to a person attending to give evidence; and
 - (b) expenses properly and reasonably incurred by a party to proceedings.

(4) Rules made under subsection (2) may include provision for any consequential, incidental, supplementary and transitional matters.

Interpretation.

18. (1) In this Law, unless the context requires otherwise -

"**descendants**" means children and remoter issue through all degrees, and includes illegitimate and adopted descendants, and cognate expressions shall be construed accordingly;

"**Court**" means the Court of the Seneschal;

"**freehold**" means real property which is not -

- (a) a tenement;
- (b) real property owned by trustees on behalf of the inhabitants of the Island of Sark;
- (c) real property vested in the Corporation of Trinity House, the States of Guernsey or any successor respectively thereto; or
- (d) real property alienated pursuant to the provisions of the Law entitled "Aliénation de Terres dans l'Île de Sercq", registered on the 16th July, 1927^d;

"**Greffier**" includes his Deputy;

^d Ordres en Conseil Vol. VIII, p. 153.

"Island of Sark" includes its dependencies;

"person with descendants" has the meaning given by section 6(1);

"person without descendants" has the meaning given by section 7(1);

"proceedings", in section 16 and 17, includes -

- (a) ex parte proceedings; and
- (b) proceedings, applications and matters of every nature and description;

whether under this Law or otherwise;

"property" means a tenement or a freehold;

"tenement" means real property having the right to a seat in the Chief Pleas;

"Seneschal" includes his Deputy.

(2) For the purposes of this Law a person shall be treated as lawfully adopted if, but only if -

- (a) he was adopted under an order made in any part of the British Islands; or

(b) he was adopted under an overseas adoption within the meaning of section 72(2) of the Adoption Act 1976^e.

(3) For the purposes of this Law -

(a) the fact that a person is named as the father of an illegitimate child in the child's birth certificate or in an official register of births shall constitute prima facie evidence of paternity;

(b) a finding in affiliation proceedings that a person is the father of an illegitimate child shall constitute conclusive evidence of paternity;

(c) the Court may make a declaration of paternity on the application of a person claiming to be entitled to succeed to a property or, with the leave of the Court, any other interested person, provided that no such application shall, except with the leave of the Court (which shall only be granted in exceptional circumstances), be commenced after the expiration of one year beginning on the date of the death of the person in respect of whose property the application is made;

(d) the burden of proving paternity shall be on the person seeking to establish the fact.

(4) In this section -

^e An Act of Parliament (1976 c. 36).

"affiliation proceedings" means proceedings in a court of competent jurisdiction by or as a result of which a person is declared by the court to be the father of an illegitimate child, whether or not the principal purpose of those proceedings was to establish the paternity of the child, but excluding proceedings the recognition or enforcement of which would be contrary to public policy;

"official register of births" means -

- (a) the register of births kept by the Registrar-General of Births and Deaths of the Island of Guernsey; or
- (b) a register of births kept elsewhere by an authority with functions comparable to those of the Registrar-General.

(5) Unless the context requires otherwise, any reference in this Law to an enactment is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

(6) The Interpretation (Guernsey) Law, 1948^f shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in Guernsey.

Savings for fief, terres seigneuriales and powers of Seigneur.

19. Nothing in this Law -

- (a) applies to the fief of Sark or to terres seigneuriales;

^f Ordres en Conseil Vol. XIII, p. 355.

- (b) derogates from the rights, powers and obligations of the Seigneur in his capacity as such.

Citation and commencement.

20. This Law may be cited as the Real Property (Succession) (Sark) Law, 1999 and shall come into force on such day as the Chief Pleas may by Ordinance appoint^g.

^g In force 19th January, 2000; see the Real Property (Succession) (Sark) Law, 1999 (Commencement) (Sark) Ordinance, 2000.

SCHEDULE
INTESTATE SUCCESSION TO REAL PROPERTY

Section 4.

General rules.

1. Property vests in the heir, testamentary or intestate, on the death of the deceased.

2. For the purposes of succession to property, but subject to the provisions of paragraphs 13 to 16 below, any distinction between propres, acquêts and conquêts is abolished.

3. In order for a person to inherit, he must be alive (including "en ventre sa mère") and, when born, capable of living ("né viable").

4. Inheritance is allowed up to, but not including, the seventh degree of relationship computed by the canonical mode.

5. Subject to the provisions of this Schedule -

- (a) siblings of the half blood rank equally with siblings of the whole blood in parity of degree;
- (b) siblings of the half blood with a common father rank equally with siblings of the half blood with a common mother in parity of degree.

6. Descendants of females rank equally with descendants of males, regardless of sex, in parity of degree.

Representation.

7. (1) In succession to property, representation is always allowed.
- (2) For representation to apply -
- (a) the person to be represented must be dead and, in his lifetime, have been capable of inheriting from the deceased; and
 - (b) the representor must be the descendant of the person to be represented, and himself must fulfil the condition in paragraph 3 above.
- (3) Representation operates through all degrees of descent.

Classes of heir.

8. For the purposes of determining the order of inheritance, the heirs of the deceased are classified as follows-

- | | |
|----------|--|
| Class 1- | descendants, comprising the descendants of the deceased through all degrees; |
| Class 2- | privileged collaterals, comprising the brothers and sisters of the deceased and their descendants; |

Class 3- ascendants, comprising those from whom the deceased is descended;

Class 4- remaining collaterals, comprising persons who are not comprised in Class 2 but who are descendants, together with the deceased, from a common ascendant.

9. A person shall not be excluded from a Class or from representation by reason only that he is illegitimate or adopted.

10. Subject to the provisions of this Schedule, a person in Class 2, 3 or 4 cannot inherit when there is a person in any preceding Class who is capable of inheriting and who fulfils the condition in paragraph 3.

General rule of intestate succession.

11. Subject to the provisions of this Schedule, in any Class -

- (a) the nearest in degree, regardless of sex, inherits; and
- (b) in parity of degree, the eldest, regardless of sex, inherits.

12. A person in Class 3 (ascendants) can only inherit from the last of his descendants.

Propres and acquêts.

13. (1) A propre is property acquired by the deceased by inheritance.

(2) Acquisition by inheritance includes -

- (a) acquisition by retraits lignagers; and
- (b) acquisition by will, but only where the devisee is a descendant of the testator.

14. (1) An acquêt is property acquired by the deceased otherwise than by inheritance.

(2) Acquisition otherwise than by inheritance includes -

- (a) acquisition by purchase, gift (including by will, but not where the devisee is a descendant of the testator) and exchange;
- (b) acquisition pursuant to saisie proceedings;
- (c) acquisition pursuant to an order of the Court.

15. An acquêt acquired jointly and for the survivor remains an acquêt when vested solely in the survivor.

Special rules for propres.

16. In relation to Classes 2, 3 and 4, a propre -

- (a) shall be returned along the line from which it was inherited by the deceased; and

- (b) in that line, shall be inherited in accordance with paragraph 11.

Property of illegitimate persons.

17. In relation to Classes 2, 3 and 4, the property of an illegitimate person -

- (a) shall be returned along the deceased's maternal line; and
- (b) in that line, shall be inherited in accordance with paragraph 11.

Property of adopted persons.

18. The provisions of this Schedule shall apply in relation to the property of an adopted person who dies intestate after the commencement of this Law in all respects as if he were the child of the adopter born in lawful wedlock, and not the child of any other person.

Escheats to Seigneur.

19. In default of an heir in Class 1, 2, 3 or 4, property escheats to the Seigneur.