

A.R. Mellows
The Law of
Succession

Third edition

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THE LAW OF SUCCESSION

by

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THE LAW OF SUCCESSION

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PREFACE

I have followed the general approach of the previous editions of this book in attempting to present as a chronological sequence and logical unity the various elements which are commonly thought of as constituting the law of succession. The law of wills and of intestacy has generally been considered as part of the Law of Property. Probate law has usually been regarded as an independent topic of little academic import. And Administration of Estates is frequently presented as part of Equity. Yet these elements combine to form a unity, which is a striking amalgam of the various sources of English law. The law and practice of the church courts, common law and equity, as well as statute law and the more recent discipline of taxation are here joined together, but with their separate origins and influences still apparent.

I have attempted to deal with the whole of this field in a length which admits of discussion without being too bulky. In doing so, I have tried not only to explain the law, but to show how sometimes the likely result can be avoided when the interests of the client so require, for a good lawyer is not one who can merely understand and interpret the law, but one who is able to use the law in the best interests of his client. For this reason I have tried to present the law not just as a series of rather dead propositions, but to illustrate its significance in overall wealth planning.

This branch of the law has seen a number of developments since the previous edition was prepared. The most important of these has been the enactment of the Inheritance (Provision for Family and Dependants) Act 1975. Other new legislation has included the Children Act 1975, and the provisions relating to the succession to tenancies of agricultural land, and to agricultural cottages. As well as recent decisions of the English courts, I have mentioned a number of recent interesting decisions of courts in the Commonwealth.

The writer of any textbook has difficulty in the selection of material to be included, and I have been faced with two problems in particular. In the first place there is a substantial overlap between the position of personal representatives and that of trustees. I have assumed that the reader of this book will not be unfamiliar

with the law of trusts, and I have therefore felt justified in merely referring on some occasions to the equivalent position of trustees, rather than giving an exhaustive exposition. For the same reason I have had to omit discussion of such topics as the perpetuities and accumulations rules, and the equitable rules as to apportionment.

In the second place, I would very much have liked to have included a section on Capital Transfer Tax, but an account in comparable detail to the rest of the book would have required at least 200 pages, and this would have caused too great an increase in the length of the book.

The manner in which I have dealt with the material is bound to reflect my own experience as a university teacher and a partner in a London firm of solicitors. The result will, I hope, be interesting and useful to students reading for degrees, and subsequently while undergoing professional training. I also hope that they will find it worth keeping by them after qualification. By the same token, I should like to think that the book will also be of assistance to practitioners, both in the law itself, and in other fields, such as accountancy, where legal problems are never far away. But above all I hope that whoever is the reader will find this subject alive and interesting.

The law is generally stated at 1 January 1977, but I have been able to include references to certain decisions reported after that date, as well as to The Family Provision (Intestate Succession) Order 1977, which increases the amount of the "statutory legacies" payable to a widow or widower of a person dying intestate after 14 March 1977.

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TABLE OF STATUTES

References in this Table to "Statutes" are to Halsbury's Statutes of England (Third) Edition showing the volume and page at which the annotated text of the Act will be found. Page references printed in bold type indicate where the Act is set out in part or in full.

PAGE		PAGE	
Administration of Estates Act		Administration of Estates Act	
1925 (13 <i>Statutes</i> 38)		1925 (<i>contd.</i>)	
	203, 204, 206, 223, 417, 551, 651-691 , 712	s. 35..	223, 579, 580, 583, 584
s. 1 ..	12, 387, 388, 394	(1) ..	583
(1) ..	387, 388, 393, 398, 432	(2) ..	550, 583
(3) ..	387	(a), (b) ..	583
2 ..	407	36..	223, 418, 420
(2) ..	401	(1) ..	420, 620, 621
3 ..	388, 398	(2) ..	420, 504, 621
(1) (ii) ..	388, 398	(3) ..	621
(2) ..	392, 432	(4) ..	381
(4) ..	389	(5) ..	428, 622, 623
(5) ..	392	(6) ..	622
5 ..	299, 300, 427	(7) ..	623
6 (4) ..	621	(10) ..	503, 558, 622
7 ..	291	37..	223, 367
(2) ..	291	39..	223, 473, 474
(3) ..	292, 346	(1) (i) ..	474
(4) ..	291	(ii) ..	405, 406, 474
9 ..	388, 393, 429	(iii) ..	367, 382
17..	367	40..	223, 405
22..	290, 415, 417, 786	41..	7, 209, 210, 223, 618, 700
(1) ..	414	(1) ..	618
23 (1) ..	291, 300, 375	(4) ..	619
(a) ..	418	(5) ..	701
(b) ..	418, 419	(9) ..	618, 619
(2) ..	291	42..	223, 380
24 (1) ..	418	43..	223, 503, 622
25..	366, 724	44..	223, 558
(a) ..	483, 726	45..	224
(b) ..	726	46..	224, 309, 707
(c) ..	365	(1) ..	706, 806
26 (4) ..	403, 404	(i) ..	707
(10) ..	450	(iii) (iv) ..	218
27 (2) ..	366	(vi) ..	219, 753
28..	456, 457, 458	(3) ..	212, 312
32..	223, 431, 433, 435, 590	(4) ..	707
(1) ..	431	47..	212, 224
33..	204, 223, 224, 406, 603, 609, 610	(1) (i) ..	710
(1) ..	204, 478, 479	(ii) ..	217
(2) ..	204, 603, 609, 610	(iii) ..	214
(4) ..	204	(iv) ..	217
(7) ..	222, 224	(3) ..	218
34..	223	47A ..	567, 729, 802
(1) ..	441	(2), (4) ..	208
(2) ..	727, 728	(5), (6) ..	207
(3) ..	584, 600, 605	(7) ..	208, 802
		(8) ..	208
		(9) ..	702

	PAGE		PAGE
Administration of Estates Act 1925 (<i>contd.</i>)		Administration of Justice Act 1970 (40 <i>Statutes</i> 373, 1098)	
s. 48	224, 707	s. 1	151, 288
(2)	707	(1)	351
49	222, 223, 224, 707	(4)	113, 285
(1)	222	(a)	288
(a)	222	(a)	150
(aa)	225, 707	Adoption Act 1950	756
50	185, 224	Adoption Act 1958 (17 <i>Statutes</i> 635)	181
51, 52	224	s. 4 (3)	756
(1)	712	16 (1)	758
54	375	(2), (3)	181
55	590	17	758
(1)	367, 368	(2)	181
(vi)	14	Adoption Act 1968 (17 <i>Statutes</i> 779)—	
(ix)	454, 551, 566	s. 4 (3)	713
(x)	205	Agricultural Holdings Act 1948 (1 <i>Statutes</i> 685) ..	628
(xvii)	222, 590	s. 3	628
(xxiv)	387	24	629
Sch. 1	525, 586, 590, 594	(1)	394
Pt. I	441	25	634, 771
para. 1, 2	609	28 (1)	765
Pt. II	584, 585	29	771
para. 2	591, 592	87 (1), (2)	767
3, 4	592, 593, 605	94 (1)	394
5	610	Agriculture Act 1947 (1 <i>Statutes</i> 183)—	
8	593	s. 72 (3)	769
Administration of Estates Act 1971 (41 <i>Statutes</i> 566)	423, 723-725	73	629
s. 1 (1), (2)	335	(3)	764
(3), (4)	292	Agriculture Act 1958 (1 <i>Statutes</i> 297)	629
(5)	335	s. 8	394
2	335	Agriculture Act 1967	764, 767
8	326	s. 40 (2) (a)	632
9	365, 483	Agriculture Act 1970	766
10	447	Agriculture (Miscellaneous Pro- visions) Act 1976 (46 <i>Statutes</i> 15)	763-773
11	793	s. 16	629
(5)	794	18 (1) (d)	631
14 (2)	447	(2)	631
Administration of Estates (Small Payments) Act 1965 (13 <i>Statutes</i> 137) ..	422	(b)	632
s. 1 (2)	423	(c)	631, 632
7 (2)	422	(3)	631, 632
Administration of Justice Act 1928—		(4) (a) (c)	632
S.L. 9	303	(d) (i)	632
Administration of Justice Act 1932 (13 <i>Statutes</i> 114)—		(ii)	633
s. 2 (1)	315	(e)	633
Administration of Justice Act 1956 (13 <i>Statutes</i> 135)—		(5), (6)	633
s. 17	365	19 (a)	630
Administration of Justice Act 1969	718-721	(b) (i), (ii)	630
s. 17	56, 86	20	630
(1), (2)	56	(2)	633, 634
18	86, 254	(4)	625
		(6) (g)	625

Table of Statutes

xxx

	PAGE		PAGE
Agriculture (Miscellaneous Provisions) Act 1976 (<i>contd.</i>)		Companies Act 1948 (5 <i>Statutes</i> 110)—	
s. 20 (8)	633	s. 76	396
(10)	625	245	310
21	631, 632	319 (1) (b), (d) ..	443, 700
22 (1), (2)	634	Sch. 1. Table A, Art 29. ..	407
23	625	Consular Conventions Act 1949 (6 <i>Statutes</i> 879)—	
Army Pensions Act 1830 (29 <i>Statutes</i> 960)—		s. 1	327
s. 5	424	County Courts Act 1959—	
Bankruptcy Act 1914 (3 <i>Statutes</i> 33)	442	s. 66	752, 753
s. 7 (2)	447	Court of Probate Act 1857 (13 <i>Statutes</i> 20): 287, 362, 692, 693	
30 (4)–(6)	445	s. 26	800
33 (1)	443	73	304, 801
(4)	446	89	694
(5), (8)	445	Court of Probate Act 1858 (13 <i>Statutes</i> 23)—	
(9)	442, 443, 444	s. 23	800
35 (1)	445	Customs and Inland Revenue Act 1881 (12 <i>Statutes</i> 437)—	
36 (1), (2)	444	s. 30	794
38	382, 384	Duchy of Lancaster Act 1920 (6 <i>Statutes</i> 706)—	
(2) (c)	384, 445	s. 3 (3)	661
42	11, 444, 445	Evidence Act 1938 (12 <i>Statutes</i> 878)	356, 358
44, 66	445	Family Law Reform Act 1969 (39 <i>Statutes</i> 896; 40 <i>Statutes</i> 623): 178, 220, 708–718, 761	
130	441, 445	s. 1	5, 44
(1), (4)	441	3 (1)	100
167	446	(3)	101, 116
Sch. 2, para. 10, 11–17 ..	447	14	219
British Nationality Act 1948 (1 <i>Statutes</i> 861)	716	(2), (4)	220
Building Societies Act 1962 (3 <i>Statutes</i> 312)—		15	138, 179
s. 46	423	(2)	158, 179
Children Act 1948 (17 <i>Statutes</i> 538)—		(8)	138, 140, 179
s. 2	722	17	220
Children Act 1975 (45 <i>Statutes</i> 669)	181, 755	Family Protection Act 1908 (New Zealand)	17, 238
Sch. 1, para. 1	180, 181	Family Provision Act 1966 (13 <i>Statutes</i> 146): 203, 238, 706–708	
3	181, 219	s. 1	806
6	180, 181	Fatal Accidents Act 1846 (23 <i>Statutes</i> 780)	401
12	180, 219	s. 1, 5	401
Civil Evidence Act 1968 (12 <i>Statutes</i> 910)	356, 357	Fatal Accidents Act 1959 (23 <i>Statutes</i> 801)—	
s. 2	254, 751	s. 1 (1)–(3)	401
(1)	751, 752	2	402
Civil List Act 1910 (6 <i>Statutes</i> 541)—		Fatal Accidents (Damages) Act 1908	402
s. 9	677		
Coal Act 1938 (22 <i>Statutes</i> 92)	139, 524, 526		
Colonial Probates Act 1892 (13 <i>Statutes</i> 34):	727, 728, 793		
s. 2	725, 726		
(1)	794		
Colonial Probates (Protected States and Mandated Territories) Act 1927 (13 <i>Statutes</i> 113)	793		

	PAGE		PAGE
Finance Act 1894 (12 <i>Statutes</i> 453)—		Finance Act 1975 (<i>contd.</i>)	
s. 9 (1)	491	Sch. 12, para. 1	426, 454
11 (1)	395	Sch. 13, Pt. I	426
Finance (1909–10) Act 1910 (12 <i>Statutes</i> 509)—		Finance Act 1976 (46 <i>Statutes</i> 1389)—	
s. 62	624	s. 94	260
Finance Act 1952—		121	209, 512
s. 30 (1)	443	(1)	12
Finance Act 1965 (34 <i>Statutes</i> 867)	2, 507	122 (1)	260
s. 20 (3)	468	Fines and Recoveries Act 1833 (27 <i>Statutes</i> 305)	236
21	468	Forfeiture Act 1870	531
22 (4)	445	Friendly Societies Act 1896 (14 <i>Statutes</i> 259)—	
(5)	386, 469	s. 35	442
24 (1) (a), (b)	468	56	423, 425
(6)	382, 386, 460	57	425
(7)	470, 507	58	423
(11)	209, 470	Friendly Societies Act 1955 (14 <i>Statutes</i> 399)—	
25	470	s. 5	423, 425
27 (1), (4)–(7)	469	Government Annuities Act 1929 (30 <i>Statutes</i> 175)	208, 680
28, 29, 31, 32	469	Government of Ireland Act 1920 (23 <i>Statutes</i> 843)	711, 728
Sch. 6, para. 16	471	Great Western Railway Act 1923	524
Sch. 7, para. 13	469	Guardianship of Minors Act 1971 (41 <i>Statutes</i> 761)	7, 316, 721–723
Finance Act 1966 (34 <i>Statutes</i> 985)—		s. 3	774
Sch. 10, para. 5	471	4	774
Finance Act 1971 (41 <i>Statutes</i> 1418)—		(1)	7, 346
Sch. 12	468	(2)	7
Finance Act 1972 (42 <i>Statutes</i> 159)—		(3), (4)	346
s. 33 (1)	443	Housing Act 1957 (16 <i>Statutes</i> 109)	1
Sch. 16	506	s. 61	499
Finance Act 1973 (43 <i>Statutes</i> 1405)—		Sch. 2, Pt. II, para. 4	500
Sch. 9	506	Housing Act 1961 (16 <i>Statutes</i> 327)	1
Finance Act 1974 (44 <i>Statutes</i> 1614)—		Income and Corporation Taxes Act 1970 (33 <i>Statutes</i> 17)	507
Sch. 1	506	s. 37–42	236
Finance Act 1975 (45 <i>Statutes</i> 1770)	2, 426, 695	52	462
s. 20 (1)	616	53	463, 570
22	3, 578	54	462
(1)	439, 616	57–64	461
23	278	154	391
25	426	(6)	391
(5)	616	168, 171	461
28 (3)	616	230	567, 572
37 (2)	616	426 (1)	459
44	276	427, 428	466
45	239	432	460
47	209, 512, 728	(2), (3)	463, 507
(2)	511	433	373, 459
Sch. 4, para. 19	426	478	276
20	620		
Sch. 5, para. 5	506		
Sch. 6, para. 1	260, 502		
Sch. 8, para. 3	632		

Table of Statutes

xxxiii

	PAGE		PAGE
Increase of Rent and Mortgage Interest (Restrictions) Act 1920—		Inheritance (Provision for Family and Dependents) Act 1975 (<i>contd.</i>)	
s. 12 (1) (g)	394	s. 12 (2)	279
Industrial and Provident Societies Act 1965 (17 Statutes 333)—		(3)	277, 281
s. 23, 24	423, 425	(4)	276, 280
25	423	14	241
Inheritance (Family Provision) Act 1938 (13 Statutes 118)	237, 238, 720	15 (1)	241, 242
s. 1 (7)	720	(2)	242
Inheritance (Provision for Family and Dependents) Act 1975 (45 Statutes 493): 203, 238, 631, 730-755		(4)	241
s. 1 (1): 220, 239, 240, 245, 270		19 (1)	260, 262
(c)-(e)	243	(2)	263
(2) (a)	245	(3)	262
(b)	246	20 (1), (2)	267
(3)	243, 274	21	254, 268
2 (1)	278	23	266
(a)-(d)	263	25 (1): 242, 243, 250, 259, 261	
(e), (f)	264	265, 272, 274, 278	
(2), (3)	263	net estate (a)	259, 260, 261
3 (1) (a)-(c)	250	(b)	260
(f), (g)	253	(e)	262
(2)	245, 255, 256	(2)	259, 278
(3), (4)	256	(4)	241, 278
(5)	246, 247, 252	(5)	242
(6)	250	27 (2)	238, 270
4	265, 266	(3)	273, 279
5	264	Interpretation Act 1889 (32 Statutes 434)	773, 806
(1) (b)	265	s. 20	72
6	265	36	728
(2), (5)	265	Intestates' Estates Act 1890 (13 Statutes 32)	684
(6), (9)	265	Intestates' Estates Act 1952 (13 Statutes 128): 203, 238, 312, 700-704	
8 (1), (2)	252, 261, 272	s. 1	707, 806
(3)	261	(4)	206, 521
9 (1)	252, 261	6	619
(2)	262	47A	207
(4)	261	Sch. 1	521, 619, 707
10	263, 271, 272, 273, 279	Sch. 2	708
(2) (b)	274	para. 1	209, 210
(3)	252, 275	2	210, 211
(4)	275, 276	3	209
(5)	277	4	209, 210
(6)	274	5, 6	211
(7)	272	Land Charges Act 1925 (27 Statutes 685)	581
(8)	273	Land Charges Act 1972 (42 Statutes 1367)	581
11	27, 263, 277, 279, 280	s. 4 (6)	620
(2)	277, 280, 281	Land Registration Act 1925 (27 Statutes 778): 673, 696	
(c)	280	s. 19-23	10
(3)	252, 280	37 (1), (2)	395
(4)	280	41	394
(5)	281	(1)	395
(6)	279	Land Transfer Act 1897 (27 Statutes 335)	288, 387, 407
12 (1)	273, 279		

	PAGE		PAGE
Landlord and Tenant Act 1954 (18 <i>Statutes</i> 553):	394, 428	Law Reform (Miscellaneous Provisions) Act 1971 (41 <i>Statutes</i> 541, 854)—	
s. 37.. .. .	428	s. 3	400
42 (2)	394	Leasehold Reform Act 1967 (18 <i>Statutes</i> 633) ..	210
Law of Property Act 1925 (27 <i>Statutes</i> 341)	684	s. 7 (8)	708
s. 16 (7)	395	Legal Advice and Assistance Act 1972 (42 <i>Statutes</i> 1199)	2
27 (2)	375, 404	Legitimacy Act 1926 (1 <i>Statutes</i> 62): 179, 516, 713, 761	
34.. .. .	390	s. 1	756
35.. .. .	390, 525	(1)	761
36.. .. .	390	5	179
40.. .. .	22, 437	8	756
51.. .. .	10	9	712
85 (1)	398	Legitimacy Act 1959 (1 <i>Statutes</i> 87)—	
88.. .. .	392	s. 1 (2)	180
91, 101	446	2	180
111	390	Limitation Act (1939 19 <i>Statutes</i> 60)—	
130 (1)	513	s. 2 (1), (3)	493
153 (3)	398	4 (3)	493
172	11, 445	5 (2)	493
175 (1)	559, 560	6	493
176	392, 431	19.. .. .	494
177	124, 125	(2)	375
179	92	20.. .. .	375, 493
184: 212, 312, 519, 520, 521, 651, 679		21.. .. .	429
185	385	22.. .. .	493
199	452	23 (4)	493
204	366, 367	26.. .. .	493
205 (1) (xxvii)	387	31 (2)	493
Law of Property (Amendment) Act 1924 (7 <i>Statutes</i> 118)—		Loan Societies Act 1840 (19 <i>Statutes</i> 192)—	
Sch. 9	13	s. 11.. .. .	423
Law of Property (Amendment) Act 1926 (27 <i>Statutes</i> 719)	451	Local Government Act 1933 (19 <i>Statutes</i> 393) ..	792
s. 3	780	s. 57.. .. .	718
Schedule	411, 413	Locke King's Act 1854 (Real Estate Charges Act 1854)	579
Law of Property (Joint Tenants) Act 1964 (27 <i>Statutes</i> 725)	375	Locke King's Act 1867 (Real Estate Charges Act 1867)	579
Law Reform (Frustrated Con- tracts) Act 1943 (7 <i>Statutes</i> 9)	398	Locke King's Act 1877 (Real Estate Charges Act 1877)	579
Law Reform (Limitation of Actions, &c.) Act 1954 (19 <i>Statutes</i> 99)—		Lunacy Act 1890—	
s. 4	400	s. 116	687
Law Reform (Married Women and Tortfeasors) Act 1935 (17 <i>Statutes</i> 128): 236, 390		Married Women (Restraint upon Anticipation) Act 1949 (17 <i>Statutes</i> 131)	236
s. 2	140	Married Women's Property Act 1882 (17 <i>Statutes</i> 116)	236
Law Reform (Miscellaneous Provisions) Act 1934 (13 <i>Statutes</i> 115)	337	s. 1-5	390
s. 1	400, 401, 438		
(1), (2)	399, 400		
2 (3)	401		
5	401		

Table of Statutes

XXXV

	PAGE		PAGE
Matrimonial Causes Act 1973 (17 Statutes 157):	747	Naval Prize Act 1918—	
	749, 754, 755	s. 4	424
s. 23, 24	746	Navy and Marines (Property of Deceased) Act 1865 (29 Statutes 990)—	
31	748	s. 3, 6, 11, 15	424
(6)	749, 750	Navy and Marines (Wills) Act 1865 (39 Statutes 884)	780
34, 35	749	s. 5	100
36 (1)	749, 750	Navy and Marines (Wills) Act 1930 (39 Statutes 888)	100
52 (1)	240	Navy and Marines (Wills) Act 1953 (39 Statutes 890)	100
Matrimonial Proceedings and Property Act 1970 (40 Statutes 795)—		New Zealand Administration Act 1969	303
s. 40 (1)	211	Opencast Coal Act 1958 (22 Statutes 472)	1
(2)	212	Parliamentary Elections Act 1695 (25 Statutes 357)—	
Mental Deficiency Act 1913 ..	52	s. 7	718
s. 64	687	Partnership Act 1890 (24 Statutes 500)—	
Mental Health Act 1959 (25 Statutes 42)	46, 52	s. 3	444
s. 103	53	22	391
(1)	56, 718, 719	42 (1)	391
(3) (a)	56	Pensions and Yeomanry Pay Act 1884 (29 Statutes 1004)—	
103A (1)	86, 719	s. 4	424
(3)	86	Pensions (Navy, Army and Air Force and Mercantile Marine) Act 1939 (29 Statutes 1063)—	
(4) (a), (b)	86	s. 6 (3)	424
(5)	254	Perpetuities and Accumu- lations Act 1964 (25 Statutes 3)—	
107	720	s. 4	131
117, 119	721	Police Pensions Act 1948 (25 Statutes 313)	424
Merchant Shipping Act 1894 (31 Statutes 57)—		Post Office Savings Bank Act 1954 (30 Statutes 200)	422
s. 176	424	s. 7	425
177	100	Powers of Attorney Act 1971 ..	349
Ministry of Social Security Act 1966. SEE Supple- mentary Benefit Act 1966		Proceedings Against Estates Act 1970 (40 Statutes 632)	438, 493
Moneylenders Act 1927 (22 Statutes 700)—		Public Authorities Protection Act 1893	429
s. 9 (1)	445	Public Health Act 1936 (28 Statutes 189)	1
National Assistance Act 1948 (23 Statutes 636)—		Public Trustee Act 1906—	
s. 42	236	s. 4 (3)	684
National Debt Act 1958 (22 Statutes 1148)—		Railways Act 1921 (26 Statutes 875)	524
s. 5 (1)	423	Real Estate Charges Act 1854 (Locke King's Act) ..	579
National Debt (Conversion) Act 1888 (22 Statutes 1099)—		Real Estate Charges Act 1867 (Locke King's Act) ..	579
s. 2	680		
National Insurance Act 1965 (23 Statutes 250)—			
s. 61	443		
National Insurance (Industrial Injuries) Act 1965 (23 Statutes 474)	443		
National Savings Bank Act 1971 (41 Statutes 1282)	423		
National Service Act 1948 (29 Statutes 578)—			
s. 48	443		

	PAGE		PAGE
Real Estate Charges Act 1877 (Locke King's Act) ..	579	Statute of Distribution (1670) (13 <i>Statutes</i> 8) ..	128, 644
Regency Act 1937 (6 <i>Statutes</i> 520) ..	718	Statute of Frauds (1677) (7 <i>Statutes</i> 6) ..	94
Regency Act 1953 (6 <i>Statutes</i> 525) ..	718	Statute of Wills (1540) ..	237
Regimental Debts Act 1893 (29 <i>Statutes</i> 1012) ..	442	Stock Transfer Act 1963 (22 <i>Statutes</i> 1033) ..	10
s. 9 ..	424	Superannuation and other Trust Funds (Vali- dation) Act 1927 (38 <i>Statutes</i> 200) ..	424
Reinstatement in Civil Em- ployment Act 1944 (12 <i>Statutes</i> 106)—		Superannuation (Miscellaneous Provisions) Act 1948 ..	424
s. 18 (1) ..	443	Supplementary Benefit Act 1966 (23 <i>Statutes</i> 695)—	
Rent Act 1965 (18 <i>Statutes</i> 620)	394	s. 26 (2) ..	439
s. 13 ..	394	Supreme Court of Judicature Act 1873 ..	151, 288
(5) ..	394	Supreme Court of Judicature (Consolidation) Act 1925 (7 <i>Statutes</i> 573; 13 <i>Statutes</i> 94): 286, 691–700, 727	
Rent (Agriculture) Act 1976 (46 <i>Statutes</i> 50) ..	394	s. 4 ..	288
Rent and Mortgage Interest Restrictions (Amend- ment) Act 1933—		20 ..	288, 362, 366
s. 13 ..	394	100 ..	681
Representation of the People Act 1949 (11 <i>Statutes</i> 543)—		152 (1), (5) ..	802
s. 167 (1) (a) ..	718	155 ..	288, 338, 417, 800
Revenue Act 1884 (13 <i>Statutes</i> 29)—		160 ..	343, 345, 786, 788
s. 11 ..	425	(1) ..	290, 294, 309
Revenue Act 1889—		(2) ..	290, 390, 784
s. 19 ..	425	161 ..	294
Settled Land Act 1925 (30 <i>Statutes</i> 344) ..	672, 688	162: 300, 303, 305, 307, 312, 336, 337, 343, 416, 801	
s. 1 ..	411	(1) ..	303
(1) (i) ..	411	163 ..	343, 344, 797
(ii) (d) ..	412	(2) ..	345
2 ..	412	164 ..	342, 802
3 (a), (b) ..	412	(3) ..	343
18 (1) ..	375	165 ..	345
30 ..	415	(1), (2) ..	293
(3) ..	415	167: 326, 726, 727, 776, 792	
36 ..	413, 414, 417	(2) ..	326
(1) ..	413, 417	(3) ..	794
(2) ..	413, 414, 417	170 ..	803
(6) ..	413	175 ..	780
Solicitors Act 1957 (32 <i>Statutes</i> 16) ..	792, 803	Taxes Management Act 1970 (34 <i>Statutes</i> 1245)—	
Solicitors Act 1965 (32 <i>Statutes</i> 95) ..	792	s. 106 (2) ..	571
Stamp Act 1815 (12 <i>Statutes</i> 418)—		Teachers (Superannuation) Act 1925 ..	424
s. 37 ..	424	Tenures Abolition Act 1660 (27 <i>Statutes</i> 298):	237, 639
Stamp Act 1891 (32 <i>Statutes</i> 134) ..	2	Tenures Abolition Act (Ire- land) 1662 ..	639
s. 62 ..	624	Testator's Family Maintenance and Guardianship of Infants Act 1916–1954 (New South Wales):	18, 279
Status of Aliens Act 1914 (1 <i>Statutes</i> 916)—			
s. 17 ..	293		

	PAGE		PAGE
Treasury Solicitor Act 1876 (6 <i>Statutes</i> 657)—		Wills Act 1752	82
s. 2, 4, 6, 7	661	Wills Act 1837 (39 <i>Statutes</i> 856): 6, 10, 13, 44, 74, 75, 78, 286, 314, 425, 639—	
Trustee Act 1893	379		649, 719, 720
Trustee Act 1925 (38 <i>Statutes</i> 104)	474, 673	s. 3	13
s. 10 (3), (4)	405	7	44, 100, 710
11 (1)	404	9	70, 84, 719, 780
(2)	405	10	195
12	406	11	93, 98, 100, 101, 649, 650, 710, 780
15	405, 436, 484	14	84, 85
16 (1)	405	15	82, 83, 782
19	404	18	42, 43, 49, 101, 124, 125, 128, 141
(1)	405	20	101, 106, 116
21	404	21	129, 130, 131, 198, 779
23	293, 405, 487, 488	22	140, 142
(1)	488	24	166, 173, 190, 191, 195
26	448, 449, 450	27	166, 194, 195, 196, 197
(2)	449	32	432, 513
27	298, 448, 451	33	432, 513, 514, 515, 517, 715
30	488, 489	34	137
31	408	Wills Act 1861	87, 706
32	408	Wills Act 1963 (39 <i>Statutes</i> 892)	86, 704–706
33	544, 713	s. 1	87
36	375, 378	2 (1) (a)	88
(1)	339, 341	(b)	87
40	381	3	87
57	402	Wills Act 1968 (39 <i>Statutes</i> 895)	693, 694
61	491	s. 1	84
62	492	(1)	293, 311
68 (4)	451	Wills Act Amendment Act 1852 (39 <i>Statutes</i> 882) ..	780
69	408, 484, 488, 491	Wills (Soldiers and Sailors) Act 1918 (39 <i>Statutes</i> 886)	649–650
(1)	474	s. 1	101
Trustee Investments Act 1961 (38 <i>Statutes</i> 228)	7, 404	2	98, 99
s. 9 (1)	405	3	94
Trustee Savings Banks Act 1954		(1)	710
s. 21 (3)	425	4	94
61	442	5 (2)	94, 99
Trustee Savings Bank Act 1969 (30 <i>Statutes</i> 243)—		8	710
s. 21 (5)	422		
Variation of Trusts Act 1958 (38 <i>Statutes</i> 220)	570		
West Indies Act 1967 (4 <i>Statutes</i> 610)—			
s. 3 (3)	716		

LIST OF CASES

A

	PAGE
Abbey v. Barnstym (1930) ..	393
Achilopoulos, <i>Re</i> , Johnson v. Mavromichali (1928) ..	349
Ackers v. Phipps (1835) ..	194
Adams, <i>In the Goods of</i> (1872) ..	72
Adamson, <i>In the Goods of</i> (1875) ..	296
Adams and Kensington Vestry, <i>Re</i> (1883) ..	12, 392, 574
Addams v. Ferick (1859) ..	451
Addison, <i>In the Estate of</i> (1964) ..	122
Adney v. Greatrex (1869) ..	182
Agnese, <i>In the Goods of</i> (1900) ..	339
Agnew v. Belfast Banking Co. (1896) ..	612
Ainsworth, <i>In the Goods of</i> (1870) ..	75
Ainsworth, <i>Re</i> , Finch v. Smith (1915) ..	577
Airey v. Airey (1958) ..	438
Alexander's Will Trusts, <i>Re</i> Courtauld-Thomson v. Tilney (1948) ..	161
Allan v. Morrison (1900) ..	113
Allen, <i>Re</i> v. Crane (1953) ..	183
Allen, <i>Re</i> , Hincks v. Allen (1880) ..	19
Allen v. McPherson (1847) ..	317
Allen's Estate, <i>Re</i> (1945) ..	549
Allen's Trusts, <i>Re</i> (1909) ..	515
Arnyot v. Dwarris (1904) ..	174
Anderson, <i>In the Estate of</i> (1944) ..	98
Anderson, <i>In the Will of</i> (1958) ..	98
Anderson, <i>Re</i> , Public Trustee v. Bielby (1928) ..	524
Anderson v. Anderson (1872) ..	83
Andrew, <i>Re</i> , Andrews v. Smorfitt (1955) ..	251
Andrews v. Freeborough (1967) ..	400
Andrews v. Partington (1791) ..	187, 189
Angerstein v. Martin (1823) ..	558
Anstead, <i>Re</i> , Gurney v. Anstead (1943) ..	591, 597, 607, 608
Anthony, <i>Re</i> , Anthony v. Anthony (1893) ..	579, 580
Applebee, <i>In the Goods of</i> (1828) ..	122
Apted, <i>In the Goods of</i> (1899) ..	352
Archer v. Hudson (1844) ..	65
Archibald v. Wright (1838) ..	553
Arnould, <i>Re</i> , Arnould v. Lloyd (1955) ..	162
Ashburner v. Wilson (1850) ..	175
Ashton, <i>In the Goods of</i> (1892) ..	295
Ashton, <i>Re</i> , Ballard v. Ashton (1902) ..	554

PAGE

Ashton, <i>Re</i> , Ingram v. Papillon (1897) ..	539
Ashwell v. Lomi (1850) ..	59, 65
Astbury v. Astbury (1898) ..	493
Asten v. Asten (1894) ..	534
Astor, <i>In the Goods of</i> (1876) ..	315
Atcherley v. Vernon (1723) ..	193
Athill, <i>Re</i> , Athill v. Athill (1880) ..	158, 582
Atkinson, <i>Re</i> , Webster v. Walter (1930) ..	589
Atkinson v. Morris (1897) ..	359
Attenborough v. Soloman (1913) ..	374, 377
Atter v. Atkinson (1869) ..	60
A.-G. v. Dimond (1831) ..	435
A.-G. v. Holbrook (1823) ..	434
A.-G. v. Hollingworth (1837) ..	434
A.-G. v. Jones and Bartlett (1817) ..	8, 90
A.-G. v. Robins (1722) ..	529
Austen, <i>In the Goods of</i> (1853) ..	99
Auther v. Auther (1843) ..	529
Avard, <i>Re</i> , Hook v. Parker (1948) ..	392
Aynsley, <i>Re</i> (1973) <i>Times</i> , 6th February ..	119
Ayrey v. Hill (1824) ..	58

B

Babcock, <i>Re</i> (1892) ..	554
Bacon, <i>In the Goods of</i> (1859) ..	118
Baddeley v. Leppingwell (1764) ..	153
Bagshaw's Trusts, <i>Re</i> (1877) ..	161
Bahin v. Hughes (1886) ..	489
Bailey, <i>Re</i> , Barclay's Bank Ltd v. James (1945) ..	155
Bainton v. Ward (1741) ..	433
Baker, <i>Re</i> , Baker v. Baker (1929) ..	143
Baker v. Baker (1858) ..	568
Baker v. Dening (1838) ..	73
Baker v. Farmer (1867) ..	528, 619
Baker (G.L.), Ltd. v. Medway Building and Supplies, Ltd., (1958) ..	493
Baldwin, <i>In the Goods of</i> (1903) ..	339
Baldwin v. Church (1716) ..	407
Balfour v. Balfour (1919) ..	20
Ball, <i>Re</i> (1930) ..	478, 479
Ballard v. Marsden (1880) ..	619
Balme, <i>In the Goods of</i> (1897) ..	90
Banks v. Goodfellow (1870) ..	44, 48, 49, 52, 54, 58