

LAWS OF THE UNITED KINGDOM
INHERITANCE (FAMILY PROVISION) ACT, 1938.

CHAPTER 45.

An Act to amend the law relating to testamentary dispositions; and for other purposes connected therewith.

[13th July 1938.]

BE it enacted by the King'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, as follows :-

Power for court to order payment out of net estate of testator for benefit of surviving spouse or child.

1. (1) Where, after the commencement of this Act, a person dies domiciled in England leaving -

(a) a wife or husband;

(b) a daughter who has not been married, or who is, by reason of some mental or physical disability, incapable of maintaining herself;

(c) an infant son; or

(d) a son who is, by reason of some mental or physical disability, incapable of maintaining himself;

and leaving a will, then, if the court on application by or on behalf of any such wife, husband daughter or son as aforesaid (in this Act referred to as a "dependant" of the testator) is of opinion that the will does not make reasonable provision for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the testator's net estate for the maintenance of that dependant:

Provided that no application shall be made to the court by or on behalf of any person in any case where the testator has bequeathed not less than two-thirds of the income of the net estate to a surviving spouse and the only other dependant or dependants, if any, is or are a child or children of the surviving spouse.

(2) The provision for maintenance to be made by an order shall, subject to the provisions of subsection (4) of this section, be by way of periodical payments of income, and the order shall provide for their termination not later than -

- (a) in the case of a wife or husband, her or his re-marriage;
- (b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is later;
- (c) in the case of an infant son, his attaining the age of twenty-one years;
- (d) in the case of a son under disability, the cesser of his disability;

or, in any case, his or her earlier death.

(3) The amount of the annual income which may be made applicable for the maintenance of a testator's dependants by an order or orders to be in force at any one time shall in no case be such as to render them entitled under the testator's will as varied by the order or orders to more than the following fraction of the annual income of his net estate, that is to say:-

- (a) if the testator leaves both a wife or husband and one or more other dependants, two-thirds; or
- (b) if the testator does not leave a wife or husband, or leaves a wife or husband and no other dependant, one-half.

(4) Where the value of a testator's net estate does not exceed two thousand pounds, the court shall have power to make an order providing for maintenance, in whole or in part, by way of a payment of capital, so however that the court, in determining the amount of the provision, shall give effect to the principle of the last preceding subsection.

(5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the testator's net estate and shall not order any such provision to be made as would necessitate a realisation that would be improvident having regard to the interests of the testator's dependants and of the person who, apart from the order, would be entitled to that property.

(6) The court shall, on any application made under this Act, have regard to any past, present or future capital or income from any source of the dependant of the testator to whom the application relates, to the conduct of that dependant in relation to the testator and otherwise, and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant, to the beneficiaries under the will, or otherwise.

(7) The court shall also, on any such application, have regard to the testator's reasons, so far as ascertainable, for making the dispositions made by his will, or not making any provision or any further provision, as the case may be, for a dependant, and the court may such evidence of those reasons as it considers sufficient, including any statement in writing signed

by the testator and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

Time within which application must be made.

2. (1) Except as provided by section four of this Act, an order under this Act shall not be made save on an application made within six months from the date on which representation in regard to the testator's estate for general purposes is first taken out.

15 & 16 Geo. 5.c.49.

(2) For the purposes of subsection (1) of section one hundred and sixty-two of the Supreme Court of Judicature (Consolidation) Act, 1925, (which relates to the discretion of the court as to the persons to whom administration is to be granted), a dependant of a testator by whom or on whose behalf an application under this Act is proposed to be made shall be deemed to be a person interested in his estates.

Effect and form of order.

3. (1) Where an order is made under this Act, then for all purposes, including the purposes of the enactments relating to death duties, the will shall have effect, and shall be deemed to have had effect as from the testator's death, as if it had been executed with such variations as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.

(2) The court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under this Act, but no larger part of the net estate shall be set aside or appropriated to answer by the income thereof the provision for maintenance thereby made than such a part as, at the date of the order, is sufficient to produce by the income thereof the amount of the said provision.

(3) An office copy of every order made under this Act shall be sent to the principal probate registry for entry and filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the probate of the will of the testator or the letters of administration with the will annexed, as the case may be.

Variation of orders.

4. (1) On an application made at a date after the expiration of the period specified in section two of this Act, the court may make such an order as is hereinafter mentioned, but only as respects property the income of which is at that date applicable for the maintenance of a dependant of the testator, that is to say -

(a) an order for varying a previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has

taken place in the circumstances of the dependant or of a person beneficially interested under the will in the property; or

(b) an order for making provision for the maintenance of another dependant of the testator.

(2) An application to the court for an order under paragraph (a) of the preceding subsection may be made by or on behalf of a dependant of the testator or by the trustees of the property or by or on behalf of a person beneficially interested therein under the will.

Interpretation.

5. (1) In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say: -

"annual income" means in relation to a testator's net estate, the income that the net estate might be expected at the date of the order, when realised, to yield in a year;

"the court" means the High Court and also the Court of Chancery of the county palatine of Lancaster or the Court of Chancery of the county palatine of Durham where those courts respectively have jurisdiction;

"death duties" means estate duty, succession duty, legacy duty and every other duty leviable or payable on death;

"net estate" means all the property of which a testator had power to dispose by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral, testamentary and administration expenses, debts and liabilities and estate duty payable out of his estate on his death;

16 & 17 Geo. 5. c. 29

"son" and "daughter," respectively, include a male or female child adopted by the testator by virtue of an order made under the provisions of the Adoption of Children Act, 1926, and also a son or daughter of the testator en ventre sa mere at the date of the death of the testator.

(2) References in this Act to any enactment or any provision of any enactment shall, unless the context otherwise requires, be construed as references to that enactment or provision as amended by any subsequent enactment including this Act.

Short title, commencement and extent.

6. (1) This Act may be cited as the inheritance (Family Provision) Act, 1938.

(2) This Act shall come into operation at the expiration of one year from the passing thereof.

(3) This Act shall not extend to Scotland or to Northern Ireland.
