



WESTERN AUSTRALIA.

ANNO TRICESIMO QUARTO

VICTORIÆ REGINÆ.

No. I.

AN ACT further to amend the Law relating to the Administration of the Estates of deceased persons.

[2nd January, 1871.]

WHEREAS by No. 8 of the Ordinances passed in the thirty-first year of the reign of Her present Majesty Queen Victoria, an Act passed in the session of Parliament held in the seventeenth and eighteenth years of the aforesaid reign was adopted and applied in the administration of Justice in this Colony; And whereas by the said Act, intituled *An Act to amend the Laws relating to the Administration of the Estates of deceased persons*, it is enacted, among other things, when any person shall, after the 31st day of December, 1854, die seized of or entitled to any estate or interest in any land or other hereditaments which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not, by his will or deed, or other document, have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged

Preamble.

34° VICTORIÆ, No. 1.

Administration of Estates of Deceased Persons.

or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole thereof; And whereas doubts may exist upon the construction of the said Act, and it is expedient that such doubts should for the future be removed: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

In construing wills, general direction for payment of debts out of personalty not to include mortgage debts, unless such intention clearly implied.

1 IN the construction of the will of any person who may die after the passing of this Act, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule established by the said Act, unless such contrary or other intention shall be further declared by words expressly, or by necessary implication, referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate.

Interpretation of the word "mortgage."

2 IN the construction of the said Act, and of this Act, the word "mortgage" shall be deemed to extend to any lien for unpaid purchase money upon any lands or hereditaments purchased by a testator.

P E R T H:

By Authority: RICHARD PETHER, Government Printer.