

Western Australia

Debts Recovery Act 1839 (Imp)

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Debts Recovery Act 1839 (Imp)

An Act to explain and extend the Provisions of an Act passed in the First year of His late Majesty William the Fourth, intituled ‘*An Act for consolidating and the amending Laws for facilitating the Payment of Debts out of Real Estate.*’³

Preamble

Whereas by an Act passed in the first year of the reign of his late Majesty King William the Fourth, intituled ‘*An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate,*’⁴ it was (amongst other things) enacted that where any suit had been or should be instituted in any court of equity for the payment of any debts of any person or persons deceased to which their heir or heirs, devisee or devisees might be subject or liable, and such court of equity should decree the estates liable to such debts or any of them to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees an immediate conveyance thereof could not, as the law then stood, be compelled, in every such case such court should direct, and if necessary compel, such infant or infants to convey such estates so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof, and in such manner as the said court should think proper and direct, and every such infant should make such conveyance accordingly, and every such conveyance should be as valid and effectual to all intents and purposes as if such person or persons being an infant or infants was or were at the time of executing the same of the full age of twenty-one years; and it was also thereby further enacted, that where any lands, tenements, or hereditaments had been or should be devised in settlement by any person or persons whose estate under the said Act now in recital or by law, or by his or their will or wills, should be liable to the payment of any of his or their debts, and by such devise should be vested in any person or persons for life or other limited interest, with any remainder, limitation, or gift over which might

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not be vested, or might be vested in some person or persons from whom a conveyance or other assurance of the same could not be obtained, or by way of executory devise, and a decree should be made for the sale thereof for the payment of such debts or any of them, it should be lawful for the court by whom such decree should be made to direct any such tenant for life or other person having a limited interest, or the first executory devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers, or in such manner as the said court should think proper; and every such conveyance, release, surrender, assignment, or other assurance should be as effectual as if the person who should make and execute the same were seised or possessed of the fee simple or other whole estate so to be sold;

And whereas doubts are entertained whether the hereinbefore recited provisions of the said Act extend to authorise courts of equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees, or of lands, tenements, or hereditaments so devised in settlement as aforesaid, and also to authorise such sales and mortgages to be made in cases where such tenant for life or other person having a limited interest, or such first executory devisee as aforesaid, is an infant; and it is expedient that the said provisions of the said Act should be so extended, and that further provision should be made in relation thereto in manner hereinafter mentioned:

Be it therefore enacted by the Queen'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,

1. Recited provisions of 11 Geo. IV & 1 Will. IV. c. 47 extended to authorise mortgages as well as sales of estates

[T]hat the said hereinbefore recited provisions of the said Act shall extend and the same are hereby extended to authorise courts of equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees, and also of lands,

tenements, or hereditaments, so devised in settlement as aforesaid, and to authorise such sales and mortgages to be made in cases where such tenant for life or other person having a limited interest, or such first executory devisee as aforesaid, is an infant.

2. Surplus of money arising from such sale or mortgage to descend in the same manner as the estates so sold or mortgaged would have

And be it further enacted, that when any sale or mortgage shall be made in pursuance of the said recited Act or this Act, the surplus (if any) of the money raised by such sale or mortgage, which shall remain after answering the purposes for which the same shall have been raised, and defraying all reasonable costs and expenses, shall be considered in all respects of the same nature, and descend or devolve in the same manner, as the estate, or the lands, tenements, or hereditaments so sold or mortgaged, and shall belong to the same persons, be subject to the same limitations and provisions, and be applicable to the same purposes as such estate or such lands, tenements, or hereditaments would have belonged and been subject and applicable to in case no such sale or mortgage had been made.

Notes

- ¹ This is a compilation of the *Debts Recovery Act 1839 (Imp)*. The following table contains information about that Act and any previous reprints.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Debts Recovery Act 1839 (Imp)</i>	1839 (2 and 3 Vict. c. 60)	17 Aug 1839	30 May 1844 (adopted by <i>Imperial Acts Adopting Act 1844</i>)

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- ² Adopted in WA by *Imperial Acts Adopting Act 1844*. (7 Vict. No. 13) [Assent 30 May 1844]
- ³ The short title *Debts Recovery Act 1839* was given to this Imperial Act by the *Short Titles Act 1896* (UK). For other information about this Imperial Act see *Halsbury's Statutes of England*, Second Edition, Vol 9, p 686.
- ⁴ I.e. *Debts Recovery Act 1830 (Imp)* (11 Geo. IV & 1 Will. IV c. 47), adopted in WA by the *Imperial Acts Adopting Act 1836* and reproduced in this part of this publication.