



ANNO VICESIMO QUINTO ET VICESIMO SEXTO

VICTORIÆ REGINÆ.

A.D. 1862.

No. 15.

An Act to assimilate the Law of the Province of South Australia, with respect to Wills, to the present Law of England on the same subject.

[Assented to, 21st October, 1862.]

WHEREAS an Act of the Imperial Parliament of Great Britain and Ireland was passed in the first year of the reign of Her present Majesty, intituled "An Act for the amendment of the Laws with respect to Wills," and such Act was adopted in South Australia by an Act of the fifth year of the reign of Her Majesty, No. 16; and whereas an Act of the said Imperial Parliament was passed in the 15th year of the reign of Her Majesty, intituled "An Act for the amendment of an Act passed in the first year of the reign of Her Majesty Queen Victoria, intituled 'An Act for the amendment of the Laws with respect to Wills,'" and it is expedient to adopt the provisions of the last-mentioned Act in the administration of Justice in South Australia—Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

Preamble.

1 Vict., c. 26.

5 Vict., No. 16.

15 Vic., c. 24.

1. Where by the first-mentioned Act it is enacted that no will shall be valid unless it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him, as aforesaid, be deemed to be valid within the said enactment as explained by this Act, if the signature shall be so placed at, or

When signature to a will to be deemed valid.

after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature shall not follow, or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the *testimonium* clause, or of the clause of attestation, or shall follow or be after or under the clause of attestation either with or without a blank space intervening, or shall follow, or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph, or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page, or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the first-mentioned Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

Retrospective operation of this Act.

2. The provisions of this Act shall extend and be applied to every will already made affecting any property in the said Province, or over which the Supreme Court may have any jurisdiction, where administration or probate has not been already granted, or ordered, in consequence of the defective execution of such will, or where the property, not being within the Ecclesiastical Jurisdiction of the said Court has not been possessed, or enjoyed, by some person or persons claiming to be entitled thereto, in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons, than the persons claiming under the will, by a court of competent jurisdiction, in consequence of the defective execution of such will.

Definition of "Will."

3. The word "Will," shall, in the construction of this Act, be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the first-mentioned Act.

Short title.

4. This Act may be cited as the "Wills Amendment Act, 1862."

In the name and on behalf of the Queen I hereby assent to this Act.

D. DALY, Governor.