

WILLS (FORMAL VALIDITY).

No. 32 of 1964.

AN ACT relating to the formal validity of wills.

[20 November 1964.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title, incorporation, and commencement.

1—(1) This Act may be cited as the Wills (Formal Validity) Act 1964.

(2) This Act is incorporated, and shall be read as one, with the Wills Act 1840.

(3) This Act shall commence on a date to be fixed by proclamation.

Interpretation. Cf. 12 & 13 Eliz. 2, c. 44 (Imp.), ss. 3, 6. No. 6416 (Vic.), s. 20A.

2—(1) In this Act, unless the contrary intention appears—

“internal law”, used in relation to any country or place, means the law that would apply in a case where no question of the law in force in any other country or place arose;

“country” means any place or group of places having its own law of nationality (including the Commonwealth and its Territories);

“place” means any territory (including a State or Territory of the Commonwealth).

(2) Where under this Act the internal law in force in any country or place is to be applied in the case of a will, but there are in force in that country or place two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows, namely:—

(a) If there is in force throughout the country or place a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or

(b) If there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time and, for that purpose, the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death and the time of execution of the will in any other case.

(3) In determining for the purposes of this Act whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of the execution of that will, but this provision

does not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

(4) This Act does not apply to a will of a testator who died before the date of the commencement of this Act, but applies to a will of a testator who dies after that date whether the will was executed before or after that date.

(5) Where (whether in pursuance of this Act or not) a law in force outside this State falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

3 A will shall be treated as properly executed if its execution conformed to the internal law in force in the place where it was executed, or in the place where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a country of which, at either of those times, he was a national.

General rule
as to formal
validity.

Imp., s. 1.
Vic., s. 20b.

4—(1) Without prejudice to section three, the following wills shall be treated as properly executed, namely:—

Additional
rules.

Imp., s. 2.
Vic., s. 20c.

(a) A will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the place with which, having regard to its registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

(b) A will, so far as it disposes of immovable property, if its execution conformed to the internal law in force in the country or place where the property was situated;

(c) A will so far as it revokes a will which under this Act would be treated as properly executed or revokes a provision which under this Act would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated; and

(d) A will, so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will, so far as it exercises a power of appointment, shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

5 The construction of a will is not altered by reason of any change in the testator's domicile after the execution of the will.

Construction
of wills.

Imp., s. 4.
Vic., s. 20b.