CHAPTER 130

ENTAILED PROPERTY (DISENTAILMENT) ACT*

To provide for the disentailment of property held in tail.

(5th May, 1950)†

Enacted by ACT XII of 1950, as amended by Legal Notice 148 of 1975.

Short title.

1. This Act may be cited as the Entailed Property (Disentailment) Act.

Interpretation.

2. In this Act, unless the context otherwise requires -

"holder" means the person who on the material date is the lawful holder in tail of things subject to a *fideicommissum*;

"material date" means the date of coming into force of this Act;

"movables", notwithstanding any other law to the contrary, includes perpetual annuities in general and, without prejudice to that generality, capitals for annuities *ad formam bullae* and credits in respect of interest accruing from monies formerly invested in the *Massa Frumentaria*, and "immovables" shall be construed accordingly;

"successor" means the person who, in accordance with the deed of foundation of a *fideicommissum*, would enter into the enjoyment of the immovables subject to that *fideicommissum*, with effect from the decease of the holder thereof.

Revocation of *fideicommissa*.

3. As from the material date all *fideicommissa* of whatsoever nature on movables and immovables, created at any time, whether they be perpetual or temporary, shall be revoked and the property theretofore affected thereby shall be held free from fetters by the holder of such movables and immovables, subject, however, to such burdens, hypothecs duly authorized and liabilities as affected the fettered property:

Provided that -

Indivisible *fideicommissa*.

(*a*) in the case of the indivisible *fideicommissa* on immovables, the immovables so disentailed shall vest in ownership free from fetters in the holder thereof as to one moiety only, subject to one moiety of the burdens, hypothecs duly authorized and liabilities which affected those immovables on the material date, while the remaining moiety of the immovables so disentailed and subject to the remaining moiety of the aforesaid burdens, hypothecs and liabilities, shall vest free from fetters in the successor (whether or not on the material date the successor be alive) in respect of the ownership subject to the enjoyment thereof for life of the holder. Sub-title 1 of Title III of Part I of Book Second of the Civil Code shall apply to the enjoyments Cap.16.

**See* also the Disentailment of Property (Extension to fiefs) Act (Chapter 212).
†*See* Government Notice No.234 of 9th May, 1950.

for life thus established but articles 331, 350, 351, articles from 354 to 362 both inclusive and article 352(3) thereof shall not be applicable. Articles 352(1) and (2) of the said Civil Code shall not apply to the said life enjoyment while owned by the holder but shall apply in respect of an assignee of that life enjoyment under article 340 of the said Civil Code;

Hypothecs on fettered property.

(*b*) where property subject to any *fideicommissum* was, while so subject, burdened by a hypothec on authority granted by a competent court, any such hypothec shall rank in relation to property freed from fetters in virtue of this Act with priority over all other hypothecs;

Appointment of successors in *fideicommissa*.

(*c*) in the case of indivisible *fideicommissa* on immovables under which the holder is endowed with the right appointing a successor, the holder thereof shall be entitled to exercise that right of appointment in respect of the successor in that moiety of the property of which, in virtue of this Act, the bare ownership vests in the successor.

Partition of estates in tail. *Amended by: L.N.148 of 1975.*

4. In any partition of immovable property subject to a *fideicommissum* on the material date and in any act or deed concerning immovable property the successor shall be represented by a curator appointed for that purpose by the Second Hall of the Civil Court or by any competent court. The application praying for the appointment of a curator shall be specially notified to the presumptive successor, if known and if in Malta at the time the application is filed:

Provided that the successor to the property subject to a *fideicomissum* if known and in Malta shall always be a party to the proceedings.

Directions given on disentailment.

5. Any direction in the interest of persons called to succeed under a *fideicommissum* given by any court on granting a disentailment shall be deemed to be spent as from the material date:

Provided that any such direction if and in so far as referable to immovable property subject to an indivisible *fideicommissum* or investment of monies in such immovables shall remain in force in respect of the moiety of the immovables subject thereto of which in accordance with the provisions of this Act the bare ownership passes in terms of the deed of foundation until that passage takes place.

Contracts concerning divisible *fideicommissa*.

6. No contract or other act *inter vivos* made or effected before the material date may be annulled or varied by reason that it had for its object things subject to a divisible *fideicommissum*.

Prescription.

7. (1) Any extension of the period otherwise necessary for the completion of prescription, ordained by any law in respect particularly of things subject to *fideicommissum*, is hereby declared to be no longer applicable.

(2) The period requisite for the completion of any prescription which has commenced to run previously to the material date, shall

be either that specified by the law obtaining previously to the material date or that applicable with effect from the material date in accordance with subarticle (1), whichever application of law will lead to the earlier completion of the prescription.

Right of administration and *jus patronatus*.

8. This Act shall not apply to rights of advowson or to any form of *jus patronatus* in ecclesiastical benefices, or to rights, temporary or perpetual, created either by a deed *inter vivos* or by a testament, whereby one or more persons are appointed to exercise or to enjoy those rights successively, and the laws now in force concerning any such rights are maintained in respect of them.

Maintenance in force of article 761 of the Civil Code. Cap. 16.

*__9.__ Nothing in this Act shall affect the provisions contained in article 761(2) of the Civil Code.

Transitory provisions.

10. All orders and decrees authorizing the sale of entailed property pending on the material date shall lapse, and the property becomes free on such date and this without prejudice to article 5 of this Act.

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*This article has been re-numbered in consequence of the omission of the original article 9. That article provided for an exemption from the Succession and Donation Duties Ordinance which was repealed by the Death and Donation Duty Act (Chapter 239). The latter law made different provision and the matter was regulated by the proviso to paragraph (*b*) of subarticle (4) of article 13 of that Chapter. That chapter was repealed by the Duty on Documents and Transfers Act (Chapter 364).