

This material has been reproduced on this webpage by or on behalf of the University of Adelaide under licence from the Attorney-General for the State of South Australia. The material is reproduced for academic and educational purposes only. Any further reproduction of this material by you may be the subject of copyright protection under the Copyright Act 1968.

SOUTH  AUSTRALIA

SIXTH REPORT

of the

LAW REFORM COMMITTEE

of

SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

—

SECTION 17 of the WILLS ACT, 1936-1966

1969

The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19th September, 1968. The Members are:

THE HONOURABLE MR. JUSTICE ZELLING, C.B.E., *Chairman.*

W. A. N. WELLS, Q.C., Solicitor-General.

S. J. JACOBS, Q.C.

K. P. LYNCH.

D. ST.L. KELLY.

The Secretary of the Committee is Mr. H. G. Edwards, c/o Adelaide Magistrates' Court Department, Adelaide, South Australia.

**SIXTH REPORT OF THE LAW REFORM COMMITTEE OF
SOUTH AUSTRALIA**

To:

The Honourable R. R. Millhouse, M.P.,
Attorney-General for South Australia.

Sir,

We have the honour to report at your request on section 17 of the Wills Act, 1936-1966.

We are of the opinion that the section in its present form serves no useful purpose and is only a trap for the unwary. It dates back to the time when persons with any interest in any action, even plaintiffs and defendants, were incompetent to prove any fact in relation to the matter in issue in the action, as it was thought they had too great an inducement to perjury.

For this reason any will which was attested by a beneficiary was originally void altogether as a will.

Section 17 was intended to and did in fact produce an improvement upon that situation by providing that the will should be held valid but avoiding the gift to the attesting beneficiary or the spouse beneficiary of the attesting witness.

We recommend that section 17 be repealed and that a new section be enacted in its place to cover the following points:—

1. If the beneficiary under any will or the spouse of a beneficiary attests a will the following provisions shall have effect:

- (i) the form of oath to be sworn by the executor or executors to lead a grant of Probate shall be amended to include a statement of that fact;
- (ii) the Court may require the execution by the attesting witness of an affidavit setting out in full the circumstances in which the attestation came to be made;
- (iii) if that affidavit is not satisfactory to the Registrar of Probates the Court may require proof of the will in solemn form of law;
- (iv) in any case any person who either
 - (a) is a beneficiary under the will or a previous will, or
 - (b) would be entitled on intestacy or partial intestacy to a share in the estate of the deceased may by summons require either—
 - (a) that the deponent attend before the Court for cross-examination on his affidavit; or
 - (b) that the will be proved in solemn form of law or both of these things.

We have the honour to be

HOWARD ZELLING.
W. A. N. WELLS.
S. J. JACOBS.
K. P. LYNCH.
D. ST.L. KELLY.

Law Reform Committee of South Australia.