

## New Zealand.



### ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Abolition of right of retainer in executor or administrator, <i>virtute officii</i>.</li> <li>3. Executor may petition Court for an order of administration in certain cases.</li> <li>4. Account of assets, debts, &amp;c., to be filed in Court.</li> <li>5. Court may order that estate be administered under this Act.</li> <li>6. Creditor may petition Court under this Act.</li> <li>7. Jurisdiction of Court in such cases.</li> <li>8. When order may not be made.</li> <li>9. Court may order estate to be administered by Official Assignee or Public Trustee.</li> <li>10. Effect of such order.</li> </ol> | <ol style="list-style-type: none"> <li>11.</li> <li>12.</li> <li>13.</li> <li>14.</li> <li>15.</li> <li>16.</li> <li>17.</li> <li>18.</li> <li>19.</li> </ol> | <ol style="list-style-type: none"> <li>11. Power of Public Trustee in regard to insolvent estates.</li> <li>12. Court to have jurisdiction of Superior Court of Bankruptcy.</li> <li>13. Special provisions as to administration of estates.</li> <li>14. Saving of acts done, &amp;c., before order made.</li> <li>15. Appeal as in Bankruptcy.</li> <li>16. Governor in Council to make rules. Rules in Bankruptcy to apply at present.</li> <li>17. Sections 3 to 16 not to come into force till date fixed by Governor in Council.</li> <li>18. Absolute power of sale under "Administration Act, 1879." Proviso. Provisions to be retrospective.</li> <li>19. Liability of administrator.</li> </ol> |
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1888, No. 19.

AN ACT to amend "The Administration Act, 1879."

[28th August, 1888.]

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Administration Act 1879 Amendment Act, 1888." Short Title.

2. No person, being a creditor in his own right or as a trustee of any estate of which he may be executor or administrator, shall hereafter, by virtue of his office as such executor or administrator, have any right of retainer in priority to the other creditors of such estate in respect of any debt due to him; but every such executor or administrator shall rank with other creditors, but without prejudice to any preferential claim or security which as a creditor he might have been able to enforce if he had not been such executor or administrator. Abolition of right of retainer in executor or administrator, *virtute officii*.

3. Where an executor or administrator shall have ascertained that the assets of the deceased available, or reasonably likely to be available, for payment of the debts of the deceased are not sufficient, or cannot be conveniently converted into money for the purpose of meeting the several claims thereon, he may in the prescribed manner petition the Court out of which administration has issued (hereinafter referred to as "the Court") to have the estate of the deceased administered under the provisions of this Act. Executor may petition Court for an order of administration in certain cases.

Account of assets, debts, &c., to be filed in Court.

4. Either at the time of, or within the prescribed time, after filing such petition, or such further time as the Court may on application allow, such executor or administrator shall also file in the Court an account verified by affidavit showing the assets, debts, and liabilities of the deceased, so far as they are known to him, which account he may from time to time amend.

Court may order that estate be administered under this Act.

5. Upon the application of an executor or administrator who has filed such petition as aforesaid, or in the event of his failing to make an application at the next available sitting of the Court, then on the application of any creditor or claimant of or upon the estate of the deceased, or any person beneficially interested therein, the Court may, if it thinks fit, make an order that the estate shall be administered under this Act.

Creditor may petition Court under this Act.

6. Any creditor of a deceased debtor whose debt shall not be satisfied by the executor or administrator, upon application to him, may, although no petition shall have been filed under section three hereof, petition the Court to have the estate of the deceased debtor administered under this Act.

Jurisdiction of Court in such cases.

7. Upon the prescribed notice being given to the executor or administrator the Court may, upon proof of the petitioner's debt, unless satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts of the deceased, and that the creditors will not be prejudiced by the estate being administered in the usual way, or unless such executor or administrator shall in the meantime take proceedings under sections four and five of this Act, make an order for the administration under this Act of the estate of the deceased, or may, upon cause shown, dismiss such petition, with or without costs; and, whatever may be the event of any such application, the Court shall have full power to order costs to be paid by either party to the other.

When order may not be made.

8. An order for administration under this Act shall not upon a creditor's petition be made without the consent of the executor or administrator until the expiration of two months from the date of the grant of probate or letters of administration, unless the executor or administrator shall have filed a petition under this Act, and shall not have proceeded therewith, or unless the petitioner proves to the satisfaction of the Court that the debtor made some fraudulent preference, or committed an act of bankruptcy within three months prior to his decease, or that the executor or administrator has preferred or is about to prefer any creditor, or is not, in the opinion of the Court, properly administering the estate.

Court may order estate to be administered by Official Assignee or Public Trustee.

9. The Court shall have power, if it be of opinion that any estate in respect of which any petition for an order for administration under this Act shall have been filed is likely to be better administered by the Official Assignee in Bankruptcy or by the Public Trustee or by some other person than by the executor or administrator, to order, by the original or any subsequent order, that the executor or administrator shall cease to administer the same, and that the same shall be administered by such Assignee or by the Public Trustee, or by such other person.

Effect of such order.

10. Upon an order being made for the administration of an estate under this Act, the whole of the property constituting the estate at

the date of the presentation of the petition upon which such order shall have been made shall vest in the executor or administrator or the Official Assignee in Bankruptcy or the Public Trustee, or such other person as aforesaid (hereinafter and in the succeeding sections hereof referred to as "the appointee"), as the Court shall by such order or any subsequent order direct, and such appointee shall forthwith proceed to realise, administer, and distribute the same in accordance with the law and practice for the time being in force with respect to the realisation, administration, and distribution of the property of a bankrupt debtor, subject, however, to the modifications (if any) made therein by this Act or any rules thereunder.

11. When an estate of which the Public Trustee is possessed as executor or under an order to administer is apparently insolvent, the filing of a certificate under his hand in the Court out of which the order issued to the effect that he elects to administer under the provisions of this Act, verified as may be prescribed by rules made under this Act, shall have the effect of a petition and order made thereon under this Act.

Power of Public Trustee in regard to insolvent estates.

12. With respect to every estate as to which a petition for administration under this Act shall be pending, the Court shall, during the pendency of such petition, and with respect to every estate ordered to be administered under this Act the Court shall, without any limit, have the same jurisdiction, authority, powers, and functions as shall for the time being belong to the Superior Court of Bankruptcy for New Zealand, and as shall be necessary for the purposes of this Act.

Court to have jurisdiction of Superior Court of Bankruptcy.

13. With respect to every estate as to which an order for administration under this Act shall have been made the following special provisions shall apply:—

Special provisions as to administration of estates.

- (1.) The appointee shall have the same authorities, powers, and functions as the Official Assignee has under the statutes and rules for the time being in force relating to bankruptcy with respect to the property of a person adjudged a bankrupt under those statutes.
- (2.) In the administration of the property of the deceased debtor under an order of administration any claim by the executor or administrator of the deceased debtor in respect of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and in respect of any amount allowed by the Court to the appointee for his own expenses or allowances, shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.
- (3.) If on the administration of the estate of a deceased debtor any surplus remains in the hands of the appointee, after payment in full of all the debts due from the debtor, together with the costs of the administration and any other moneys that would be payable in case of bankruptcy, such surplus shall be paid over or applied as may be approved by the Court, having regard to the interests of the persons entitled thereto.
- (4.) Notice to the executor or administrator of a deceased debtor of the presentation by a creditor of a petition under this

Act shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the executor or administrator, except in pursuance of such order, shall operate as a discharge to him.

- (5.) Every conveyance, transfer, charge, settlement, bill of sale, payment, obligation, proceeding, act, and thing made, incurred, taken, done, or suffered by the deceased in his lifetime, and which would, if he had become bankrupt at the date of his death, have been fraudulent or void as against the Official Assignee or the creditors of the deceased, shall be liable to be treated as void or to be set aside by the appointee administering the estate under this Act, as if such deceased had been alive.
- (6.) Notwithstanding anything in this Act contained, proceedings shall only be taken to avoid or set aside any voluntary settlement after leave of the Court shall be granted, and only to the extent and upon such terms and conditions as the Court shall direct, and the Court before granting such leave shall require the appointee to disclose the condition of the estate, and whether it is likely that sufficient shall be realized thereout to pay the creditors without recourse to the property included in any such voluntary settlement, and shall only grant such leave if it shall appear to the Court that the property therein or part thereof shall be required in order to enable full payment of the debts of the estate.

Saving of acts done,  
&c., before order  
made.

14. Nothing in this Act shall invalidate any payment made or any act or thing done in good faith by the executor or administrator before the time when notice shall be given to him that it is intended to apply for an order for administration.

Appeal as in  
Bankruptcy.

15. An appeal shall lie from any order of the Court or a Judge thereof in like manner as the same would lie from a decree or order of the Superior Court of Bankruptcy or a Judge thereof.

Governor in Council  
to make rules.

16. The Governor in Council may from time to time make rules for the following purposes, or any of them, and such rules or any of them may from time to time alter or vary:—

Prescribing—

- (1.) The forms of petition to be made, and of any account to be filed, and how the same shall be verified;
- (2.) The mode and times in which debts or claims of creditors may be made and proved;
- (3.) The allowance or disallowance of any such debts or claims;
- (4.) The appearance of creditors or other persons on any application in respect of the estate or in relation thereto, and the procedure in case of the absence of any creditor or other person;
- (5.) The notices to be given for any purpose, and by and to whom the same shall be given, and for the making of any order, or the confirmation or variation thereof, and the forms of any such notice or order;

- (6.) The manner and times at which creditors' meetings may be held;
- (7.) And generally may make rules to give effect to this Act, and the due management and distribution of the assets of any estate, with power in and by such rules to adopt in whole or in part the practice and procedure of the Supreme Court or of any Superior Court of Bankruptcy, whether given under statute or rules, for all or any purposes of this Act.

And until any rules shall be made under this Act all rules in force for the time being in respect of the Superior Court of Bankruptcy shall be deemed to be rules in force under and for the purposes of this Act, so far as applicable.

Rules in Bankruptcy to apply at present.

17. The several sections of this Act from three to sixteen, both inclusive, shall only come into operation on a day to be fixed by the Governor in Council, and when brought into operation shall not apply to any estate in respect of which an administration suit shall have been brought for the purpose of having the estate administered for the benefit of creditors.

Sections 3 to 16 not to come into force till date fixed by Governor in Council.

18. "The Administration Act, 1879," shall hereafter be deemed to confer upon an executor or administrator an absolute power of sale of any real estate passing under the said Act, without any limitation whatever (except as herein provided), subject to any estate or interest lawfully created therein prior to any such sale; and the proceeds of any such sale shall be assets in the hands of such executor or administrator for the purposes of the said Act or of this Act.

Absolute power of sale under "Administration Act, 1879."

Provided that the power of sale hereby conferred shall not be exercised without the leave of the Supreme Court or a Judge thereof, but such consent shall not be necessary where such sale is made under the provisions of "The Administration Act, 1879," in cases where such powers subsisted immediately prior to the passing of this Act, and could have been exercised without such consent.

Proviso.

The provisions of this section shall apply to any executor or administrator to whom probate or administration shall have been granted previously to the coming into operation of this Act as to any estate then unadministered. Any sale heretofore made which would have been valid if this section had then been in force is hereby declared to be valid.

Provisions to be retrospective.

19. No person who shall have been appointed or shall be appointed an administrator upon an application made by him as the attorney or agent for an executor or administrator absent from the Colony of New Zealand shall be deemed liable to account to any one in respect of his executorship or administratorship excepting only to the executor or administrator whose agent or attorney he was, or to any person who shall, after he shall have been appointed such attorney or agent, be appointed executor or administrator of the same estate.

Liability of administrator.