

New Zealand



ANALYSIS

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1945, No. 3—*Private*

Title. AN ACT to vary the Terms of the Will of the late Marianne Caughey Preston, of Auckland, Married Woman, by increasing the Provision therein made for One Reginald Caughey Seymour Smith.

[24th October, 1945]

Preamble. WHEREAS Reginald Caughey Seymour Smith, of Auckland, shop-assistant, having been born in the United Kingdom of Great Britain and Ireland, came to New Zealand on or about the ninth day of March, nineteen hundred and nine, as an infant in arms in the charge of Marianne Caughey Preston (then Marianne Caughey Smith), above described, and her husband, William Henry Smith, of Auckland, draper: And whereas from thence onwards the said Reginald Caughey Seymour Smith was brought up in the household of the said William Henry Smith and his said wife

as if he had been their son: And whereas the said Reginald Caughey Seymour Smith was not at any time legally adopted by the said William Henry Smith and/or his said wife either in the United Kingdom of Great Britain and Northern Ireland or in New Zealand: And whereas by a certain last will and testament of the said William Henry Smith dated the twenty-fourth day of December, nineteen hundred and nine, it was provided that in case the said Marianne Caughey Smith survived the said William Henry Smith the said Marianne Caughey Smith should take the whole of his estate, but in case the said Marianne Caughey Smith did not so survive the said William Henry Smith a bequest was made to the said Reginald Caughey Seymour Smith of ten thousand fully-paid one-pound shares of and in Smith and Caughey, Limited, if and when he attained the age of twenty-five years, such bequest being of a value of not less than ten thousand pounds: And whereas the said William Henry Smith died at Auckland on or about the thirty-first day of August, nineteen hundred and twelve (the said Reginald Caughey Seymour Smith being then of the age of five or thereabouts), having previously revoked his said will and testament by a subsequent last will and testament dated the twenty-second day of August, nineteen hundred and twelve, by which he gave all his property to his said wife: And whereas at divers times subsequent to the death of the said William Henry Smith and before her last will and testament dated the fifteenth day of February, nineteen hundred and thirty-four, the said Marianne Caughey Smith executed several wills and testamentary documents wherein provision was made for the said Reginald Caughey Seymour Smith as follows:—

- (a) By will dated the twenty-first day of May, nineteen hundred and seventeen, fifteen thousand fully-paid-up shares in Smith and Caughey, Limited, were directed to be transferred to him the said Reginald Caughey Seymour Smith on his attaining the age of twenty-five years or previously marrying an approved person, with power (*inter alia*) to the trustees to pay to him the income meanwhile:

- (b) By will dated the tenth day of November, nineteen hundred and twenty, fifteen thousand fully-paid shares in Smith and Caughey, Limited, were left upon the same trusts as in the will of the twenty-first day of May, nineteen hundred and seventeen:
- (c) By codicil dated the sixth day of February, nineteen hundred and twenty-four, the gift of shares in Smith and Caughey, Limited, was revoked, and in lieu thereof fifteen thousand pounds in cash was directed to be set apart and the income applied to the maintenance and benefit of him the said Reginald Caughey Seymour Smith during his life at the discretion, however, of the trustees, with a proviso empowering the trustees at any time after he attained the age of twenty-five years if he should have led an upright, diligent, and satisfactory life to pay to him the whole of such sum of fifteen thousand pounds or some part thereof as the trustees might think fit, the balance, if any, to form part of the residuary estate:
- (d) By will dated the tenth day of August, nineteen hundred and twenty-seven, no provision of any kind was made for him the said Reginald Caughey Seymour Smith:
- (e) By will dated the nineteenth day of April, nineteen hundred and twenty-nine, the sum of one hundred pounds was directed to be set apart, with a discretionary power to apply the income therefrom for the benefit of him the said Reginald Caughey Seymour Smith during his life, with power also to the trustees to pay the said sum of one hundred pounds or such part of such sum of one hundred pounds as the trustees should in their discretion decide to him after attaining the age of twenty-five years if he had led an upright, diligent, and satisfactory life:
- (f) By will dated the twelfth day of November, nineteen hundred and twenty-nine, the conditional provision of one hundred pounds made

in the will of the nineteenth day of April, nineteen hundred and twenty-nine, is repeated:

- (g) By codicil dated the tenth day of November, nineteen hundred and thirty, all provision for him the said Reginald Caughey Seymour Smith is revoked:
- (h) By will dated the twenty-eighth day of November, nineteen hundred and thirty-one, the conditional provision of one hundred pounds made in the will of the nineteenth day of April, nineteen hundred and twenty-nine, is repeated:
- (i) By will dated the twelfth day of September, nineteen hundred and thirty-two, the conditional provision of one hundred pounds made in the will of the nineteenth day of April, nineteen hundred and twenty-nine, is repeated:

And whereas on the twelfth day of September, nineteen hundred and thirty-two, the said Marianne Caughey Smith was married to one Raymond Preston, of Auckland, minister of religion: And whereas by her last will and testament dated the fifteenth day of February, nineteen hundred and thirty-four, the said Marianne Caughey Preston directed that the sum of one hundred pounds should be set apart by her trustees upon trust to pay the income therefrom for the maintenance, benefit, and advancement of the said Reginald Caughey Seymour Smith during his life, provided that when he attained the age of twenty-five years if the then surviving trustees should certify in writing that his life had been from her death upright, diligent, and satisfactory, then the said trustees should have power to pay to him the said Reginald Caughey Seymour Smith the whole of the said sum of one hundred pounds or such part thereof as they might think fit, and no other provision was made for the said Reginald Caughey Seymour Smith: And whereas the said Reginald Caughey Seymour Smith is now of the age of almost thirty-seven years: And whereas on the first day of September, nineteen hundred and thirty-nine, the trustees of the said will certified in writing under their hands that the said Reginald Caughey Seymour Smith was then over the age of twenty-five years, and that

since the death of the said Marianne Caughey Preston his life had been upright, diligent, and satisfactory, and thereupon paid over to him the said sum of one hundred pounds pursuant to the powers given to them by the said will: And whereas the said Marianne Caughey Preston died at Auckland on the first day of September, nineteen hundred and thirty-eight, without having revoked the aforementioned provisions of her said will and testament, whereof probate was granted out of the Supreme Court of New Zealand at Auckland on the twenty-eighth day of October, nineteen hundred and thirty-eight, to John Alexander, of Auckland aforesaid, Solicitor; Samuel Little Barry, of Auckland, company secretary; Albert Bygrave Chappell, of Auckland aforesaid, minister of religion; and William James Mains, of Auckland aforesaid, warehouseman: And whereas the value of the estate of the said Marianne Caughey Preston was assessed by the Commissioner of Stamp Duties for the purposes of the duty payable under the Death Duties Act, 1921, and its amendments at four hundred and sixty-seven thousand seven hundred and ninety-three pounds one shilling and tenpence: And whereas the balance of residuary assets in the estate is approximately three hundred and twenty-five thousand pounds: And whereas under the terms of the said last will and testament of the said Marianne Caughey Preston the residue of her estate is held for the provision of a rest-home for aged, infirm, or impecunious women: And whereas the amount of such residue available for such purpose other than a rest-home purchased by the trustees is approximately three hundred and twelve thousand four hundred and fifty pounds: And whereas the said Reginald Caughey Seymour Smith, claiming to be the son of the said Marianne Caughey Preston, issued an originating summons under the Family Protection Act, 1908, out of the Supreme Court of New Zealand at Auckland on the nineteenth day of August, nineteen hundred and forty-three, whereby he sought an order making further and better provision for him out of the said estate: And whereas, after hearing in the said Supreme Court, an order was made on the seventeenth day of August, nineteen hundred and forty-four, dismissing the said summons on the grounds that the said Reginald Caughey Seymour

Smith was not the son of the said Marianne Caughey Preston: And whereas the said Supreme Court contemporaneously with the making of the said order further ordered that the trustees in the said will should be at liberty to distribute the said estate without making any provision for the said Reginald Caughey Seymour Smith: And whereas the said Reginald Caughey Seymour Smith has represented to the said trustees that it would be just and equitable for the said will to be varied by increasing the payment to him therein provided from one hundred pounds to fifteen thousand pounds, but the said trustees have been advised that the granting of any such increased provision is a matter solely for the decision of the Legislature and have declined to express any opinion thereon: And whereas in consequence of the order made by the Supreme Court as aforesaid there is no legal power or authority for the payment referred to: And whereas such varied or increased provision cannot be made by the said trustees without Legislative authority: And whereas the objects of this Act are not attainable otherwise than by legislation:

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

1. This Act may be cited as the *Marianne Caughey Preston Estate Act, 1945.* Short Title.

2. In this Act, if not inconsistent with the context,— Interpretation.
 “Testatrix” means the said Marianne Caughey Preston:

“Trustees” means Samuel Little Barry, of Auckland, secretary, and William James Mains, of Auckland, warehouseman, the surviving trustees of the will of the testatrix, and the trustee or trustees for the time being lawfully acting as trustee or trustees of the will of the testatrix in lieu of or in addition to the said Samuel Little Barry and William James Mains, or either of them:

“Bequest” means and includes the sum of one hundred pounds given and bequeathed to the said Reginald Caughey Seymour Smith by the testatrix as set out in paragraph five, subclause thirty-three, of her last will and testament.

Variation of terms of bequest.

3. The will of the said deceased shall be deemed to be varied by increasing from one hundred pounds to fifteen thousand pounds the bequest in favour of the said Reginald Caughey Seymour Smith, hereinbefore referred to.

Authority for payment by trustees.

4. The trustees are hereby authorized to pay to the said Reginald Caughey Seymour Smith the sum of fifteen thousand pounds, and for so doing this Act shall be their warrant and authority.

Source of payment of sum to be paid.

5. The said sum of fifteen thousand pounds shall be paid by the trustees out of the residue of the said estate, and, until payment, shall be deemed to be charged upon the said residue.

Payment to be unconditional.

6. Payment of the said sum of fifteen thousand pounds shall not be subject to such conditions as are contained in the said will relating to the bequest to the said Reginald Caughey Seymour Smith or to any other conditions, and shall be made within one month of the passing of this Act and without interest.

Succession duties to be paid by Reginald Caughey Seymour Smith.

7. All succession duties payable in respect of the said sum of fifteen thousand pounds shall be paid by the said Reginald Caughey Seymour Smith.

Provision in case of death of beneficiary.

8. In the event of the death of the said Reginald Caughey Seymour Smith prior to payment to him of the said sum of fifteen thousand pounds, the said sum shall be deemed to form part of his estate and shall be payable to his executors or other legal representatives.

Authority for use of name.

9. As from the date of the passing of this Act the said Reginald Caughey Seymour Smith shall be deemed to be entitled to use the name Reginald Caughey Seymour Smith as his own.

Private Act.

10. This Act is hereby declared to be a private Act.