

Hon. Mr. Hislop.

ADMINISTRATION ACT 1879 AMENDMENT.

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A BILL INTITULED

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

Title.

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

5 1. The Short Title of this Act is "The Administration Act 1879 Amendment Act, 1887."

Short Title.

10 2. No executor or administrator, who is a creditor of any estate of which he is such executor or administrator, shall hereafter by virtue of his office have any right of retainer in respect of any debt due to him in priority to the other creditors of such estate; but every such executor or administrator shall rank with other creditors, but without prejudice to any preferential claim which as a creditor he might have been able to enforce if he had not been an executor or administrator.

Abolition of right of retainer in executor or administrator *virtute officii*.

15 3. Where an executor or administrator of an estate shall have ascertained that the assets available, or that are reasonably likely to be available, for payment of the debts owing by such estate are not sufficient for that purpose, or cannot be conveniently converted into money to meet the several claims thereon, he may file in the Court out of which administration has issued (hereinafter referred to as "the Court") a declaration in writing, attested by a Justice of the Peace or a solicitor of the Supreme Court, to the effect that, as such executor or administrator, he is unable to pay the debts and claims due and owing in or on such estate.

Executor may file statement of inability to meet engagements.

20 4. Within three days after filing such declaration, or such further time as the Court may on application allow, such executor or administrator shall also file a verified statement of the assets and

Executor to file statement of assets, &c., and thereupon to be protected.

liabilities of the estate, so far as they are known to him, which statement he may from time to time amend by a supplementary statement; and after the filing of such statement, and if he shall have complied with this Act and the rules to be made thereunder, no action or other proceeding shall be brought or continued against such executor or administrator for the purpose of recovering or enforcing any such debt or claim, and no execution, attachment, or other process in respect of any judgment obtained against such executor or administrator shall be available without leave of the Court. 5

5. Upon the application of an executor or administrator who has filed such statement as aforesaid, and complied with all rules prescribed under this Act as to notice to creditors or other claimants, the Court may, if it thinks fit, make an order that the estate in respect of which such statement has been filed shall be wound up and administered under this Act. 10 15

Estate of person dying bankrupt may be administered as in bankruptcy.

6. Any creditor or creditors of a deceased debtor, whose debt or debts would have been sufficient to support a bankruptcy petition against such debtor had he been alive, may, at the prescribed time and in the prescribed form, present to the Court a petition praying for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy. 20

Jurisdiction of Court in such cases.

7. Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the Court may, in the prescribed manner, upon the proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, and that the creditors will not be prejudiced by the estate being administered in the usual way, or unless such representative shall in the meantime take proceedings under sections three, four, and five of this Act, make an order for the administration under this Act of the deceased debtor's estate, or may, upon cause shown, dismiss such petition with or without costs, and, in the event of the petition being dismissed on account of the executor or administrator having taken proceedings under sections three and four hereof, the Court may, if it shall think fit, grant the petitioner the costs of his petition. 25 30 35

When order may be made.

8. An order of administration under this Act shall not, without the consent of the legal representative of the deceased debtor, be made until the expiration of two months from the date of the grant of probate or letters of administration, unless the petitioner proves to the satisfaction of the Court that the debtor committed an act of bankruptcy within three months prior to his decease. 40

Notice to representative of deceased debtor equivalent to notice of act of bankruptcy.

9. Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section 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 legal personal representative shall operate as a discharge to him. Save as aforesaid, nothing in this section shall invalidate any payment made, or any act or thing done, in good faith by the legal personal representative before the date of the order for administration. 45 50

Effect of order of administration.

10. Upon an order being made for the administration of a deceased debtor's estate under the provisions of this Act, or upon the executor

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or administrator filing the statements as provided for in this Act, all the provisions and rules of law relating to the administration of the assets of a bankrupt person shall, subject to any modification by rules to be made under this Act, so far as such provisions and rules of law  
5 are applicable, apply to any such estate and all the property and effects thereof to be administered: Provided always that the funeral and testamentary expenses, and all other necessary costs and expenses in and about the administration of the estate, incurred by the executor or administrator, including any allowance  
10 made to him under the provisions of the law in that respect for his own services, shall be a first charge upon the estate.

11. The executor or administrator of any estate administered under the provisions of this Act shall hold the assets upon trust to realise and distribute the same as provided in this Act, and subject  
15 as may be prescribed by rules, but so that if any surplus remains in the hands of the executor or administrator after payment thereof of all amounts chargeable by way of costs and expenses, and of all the debts in full due from the debtor, such surplus shall be distributed under the law in force relating to the distribution of the assets of  
20 deceased persons.

12. Every Court shall have all such jurisdiction and authority as may be necessary to give effect to this Act and any rules made there-  
under, and shall have full power to decide all questions of priorities, and all other questions whatsoever whether of law or fact, which may  
25 arise in any case coming within the cognisance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any case coming within the scope of this Act; and an appeal shall lie from the order or decree of any such Court in like  
30 manner as the same would lie from any order or decree made in any matter within the ordinary jurisdiction of such Court.

Jurisdiction of Court; appeal to higher Court.

13. 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:—

Governor to make rules.

- 35 (1.) Prescribing the forms of declaration to be made by an executor or administrator, and of any statement of assets and liabilities to be filed as provided by this Act, and how the same shall be verified.
- 40 (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 hearing or application in respect of any estate or in relation thereto, and the procedure in case of the absence of any  
45 creditor or other person.
- (5.) The notices to be given for all or any of the purposes mentioned in this Act, and by and to whom the same shall be respectively given, and for the making of any order or decree in any such matter, or the confirmation or variation thereof, and the forms of any such notice or order.
- 50 (6.) The manner and times at which creditors' meetings may be held, and the mode in which and the circumstances under

which an executor or administrator may apply for an order that he has fully administered the estate, or under which he may be discharged from further responsibility.

- (7.) And generally may make rules where it may seem necessary to interpret or supplement the provisions of this Act, and also such rules as to practice and procedure as may be necessary 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 of the purposes of this Act. 5 10

Sections 3 to 13 not to come into force till day to be fixed.

14. The several sections of this Act from three to thirteen, both inclusive, shall only come into operation on a day to be fixed by the Governor in Council.