

1878

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Hon. Mr. Stout.

Administration.

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A BILL INTITLED

AN ACT to amend the Law relating to the Administration of the Estates of Deceased Persons. Title.

WHEREAS it is expedient to provide for the administration of the real estates of deceased persons by their executors or administrators, and otherwise to amend and simplify the laws relating to the administration of such estates, and the practice of granting probates and administrations, and to provide for the succession to property in certain cases of illegitimacy : Preamble.

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

10 **1.** The Short Title of this Act shall be "The Administration Act, 1878." Short Title.

2. This Act shall come into operation on a day to be fixed by the Governor, by Proclamation in the Government *Gazette*, and such day to be not less than *three* months from the day upon which notice of Her Majesty's approval of the same shall be published in the said *Gazette*. Commencement.

3. The several Acts mentioned in the *First* Schedule hereto, to the extent to which such Acts are in such Schedule expressed to be repealed, shall be and the same are hereby repealed, except as to acts done, liabilities incurred, privileges acquired, appointments rules or orders made, and proceedings taken under any of the said Acts. Repeal.

Interpretation.

4. In the construction of this Act, unless the context be inconsistent with the meaning hereby assigned,—

“Real estate” shall mean and include messuages, lands, tenements, and hereditaments, and whether corporeal or incorporeal; and any share, estate, or interest in them or any of them, whether the same shall be freehold or chattel interest; and any possibility, right, or title of entry or action, and whether the same shall be in possession, reversion, remainder, or contingency. 5

“Court” shall mean the Supreme Court or the District Court, as the case may be, granting probate, or administration, or (in the case of the Public Trustee) an order to administer. 10

“District Land Registrar” shall mean the District Land Registrar of a Land Registrar’s district under “The Land Transfer Act, 1870,” or any Act amending the same. 15

“Registrar” shall mean the Registrar of the Supreme Court, or the Clerk of the District Court, as the case may be, or the Deputy for the time being of such Registrar or Clerk.

“The Public Trustee” shall mean the Public Trustee under “The Public Trust Office Act, 1872,” or any Act amending the same. 20

“Administration” and “administrator” shall respectively mean and comprehend letters of administration of the estates of deceased persons, and administrator, whether with or without the will annexed, and whether granted for general, special, or limited purposes. 25

5. The Supreme Court shall have jurisdiction to grant probate of the will or administration of the estate of any deceased person leaving property, whether real or personal, within the Colony of New Zealand.

6. Immediately upon the granting of probate of the will or administration of the estate, or an order to administer the estate, of any deceased person, all the real estate then unadministered of such person, whether held by him beneficially or in trust, shall vest in the executor or administrator to whom such probate, or administration, or order shall be granted, as the case may be, for all the estate therein of such person, and, if there shall be more than one such executor or administrator, shall vest in them as joint tenants, and the title of such executor or administrator shall, so far as relates to persons dying after this Act comes into operation, relate back to and be deemed to have arisen immediately upon the death of such deceased person, as if there had been no interval of time between such death and the grant of such probate or letters of administration, or an order to administrator, as the case may be. 30 35 40

7. The real estate of every deceased person shall be assets in the hands of his executor or administrator for the payment of all duties and fees payable under any Act making or charging duties or fees on the estates of deceased persons, and for the payment of his debts in the ordinary course of administration; and it shall be lawful for such executor or administrator to sell, lease, or mortgage such real estate, or any part thereof, with or without a power of sale, and to convey, demise, or assure the same to a purchaser, lessee, or mortgagee in as full and effectual a manner in law as the testator or intestate of such executor or administrator could have done in his lifetime. This section shall apply to any executor or administrator to whom probate, or administration, or an order to administer shall have been granted previously to the coming into operation of this Act, as to any estate then unadministered. Any sale or lease may be either by public auction or private contract, and subject to such conditions as the executor or administrator shall think fit, and such executor or administrator may buy in, and rescind any contract, without being responsible for any involuntary loss thereby occasioned. 45 50 55 60

Probate or administration may be granted where any person leaves real or personal property.

Real estate to vest in executors or administrators.

Real estate to be assets for payment of debts.

8. The executor or administrator of any person beneficially interested may from time to time by petition and after such previous notice as may be prescribed by the rules of the Supreme Court in that behalf, apply to such Court, and the said Court may upon such terms as it shall think fit, order and direct the course of proceeding which shall be taken in regard to the time and mode of sale or lease of any real estate passing under this Act, the application for maintenance or advancement or otherwise of shares or interests of infants, the expediency or mode of effecting a partition if applied for, or the expediency of mortgaging any of such real estate, and generally in regard to the administration of the property for the greatest advantage of all persons interested.

Executor or administrator may petition for and Court may order generally as to estate of deceased person.

Provided always that nothing herein contained shall render it compulsory for the executor or administrator to apply to the Court for leave to exercise the powers of sale or lease hereby given.

9. In all suits in equity concerning the real estate of a deceased person, his executor or administrator shall represent his real estate and the persons interested therein in the same manner and to the same extent as, in suits concerning personal estate, the executor or administrator represents such estate and the persons interested therein.

In suits, executor or administrator to represent real estate.

10. Subject to the provisions of this Act, the executor or administrator shall hold—

How real estate to be held by executor or administrator.

(1.) The real estate of any person who dies after this Act comes into operation leaving a will according to the trusts and dispositions of such will, so far as such will devises or affects such real estate.

(2.) The real estate of any person who dies intestate as to such real estate after this Act comes into operation, upon trust for the person or persons who, if such real estate were personal estate, would be entitled to such personal estate; and such person or persons shall in all respects have the same shares, estates, powers, and interests in and over such real estate as he or they would have in case the same had been personal estate.

(3.) The real estate of any male person who shall have died after the *first* day of *October*, one thousand eight hundred and seventy-five (and before this Act comes into operation), intestate as to such real estate, leaving him surviving a wife, or child or children, or any lineal descendant, upon trust for the person or persons who would have been entitled thereto under "The Real Estate Descent Act, 1874," if this Act had not been passed.

(4.) The real estate of any person (other than a male person, leaving him surviving a wife, or child or children, or any lineal descendant) dying intestate as to such real estate after the *first* day of *October*, one thousand eight hundred and seventy-five, and before this Act comes into operation, upon trust for his or her heir-at-law.

(5.) The real estate of any person who died on or before the *first* day of *October*, one thousand eight hundred and seventy-five, intestate as to such real estate, upon trust for his or her heir-at-law.

11. In any case wherein upon inquiry the Court shall be satisfied that a partition of the real estate would be advantageous to the parties interested therein, the Court may appoint one or more arbitrators to effect such partition, and to exercise in regard thereto, under its directions and control, powers similar to those of Commissioners acting under a decree in equity for partition. And upon the report and final award of the said arbitrators, setting forth the particulars of the land allotted to each party interested, the executor or administrator shall convey or transfer the same accordingly.

Partition may be ordered.

Rights and duties of executor or administrator.

12. The executor or administrator of any deceased person shall have the same rights and be subject to the same duties with respect to the real estate of such person that executors or administrators heretofore have had or been subject to with respect to personal estate, and shall perform the duties imposed on the administrator by any Act making or charging duties or fees on the estates of deceased persons. 5

Probate to be evidence of wills concerning real estate.

13. The probate of any will, or letters of administration with a will annexed, granted after the coming into operation of this Act, shall be evidence of such will upon all questions concerning real estate, in the same manner and to the same extent as heretofore in questions concerning personal estate, and every probate or letters of administration shall in all cases be *prima facie* evidence of the death and the date of the death of the testator or intestate. 10

All specialty and simple contract debts to stand in equal degree.

14. In the administration of the estate of every person who shall die after this Act comes into operation, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a special debt, but all the creditors of such person, as well specially as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any Statute or law to the contrary notwithstanding: Provided always that this Act shall not prejudice or affect any lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt. 15 20 25

Form of rule to Public Trustee.

15. Whenever the Court shall grant an order to the Public Trustee to administer the estate of any deceased person, the same shall be in the form in the *Second Schedule* hereto.

Entry to be made in the register-book of appointment of executor or administrator.

16. Upon the receipt of the office-copy of the probate of any will, or of any letters of administration, or of an order to administer granted to the Public Trustee, whereby it shall appear that any person has been appointed the executor or administrator of any deceased person, the District Land Registrar shall, on an application in writing of the executor, administrator, or Public Trustee, as the case may be, to be registered as proprietor in respect of any land therein described, enter in the Register Book, upon the folium constituted by the grant or certificate of title of such land, a memorandum notifying the appointment of such executor, administrator, or Public Trustee, and the day of the death of the proprietor when the same can be ascertained, and upon such entry being made such executor, administrator, or curator shall become the transferee, and be deemed to be the proprietor of the estate or interest of the deceased proprietor in such land, or of such part thereof as shall then remain unadministered, and shall hold the same subject to the equities upon which the deceased held the same, but for the purpose of any dealings with such land every such executor, administrator, or Public Trustee shall be deemed to be the absolute proprietor thereof. If in any case probate or administration shall be granted to more persons than one, all of them for the time being shall join and concur in every instrument relating to the land. 30 35 40 45

Practice of Court in its probate jurisdiction.

17. The practice of the Court in its probate jurisdiction shall, except where otherwise provided by this Act, or by the rules to be from time to time made under this Act, be regulated, so far as the circumstances of the case will admit, by the practice of the Court in its ecclesiastical jurisdiction heretofore in force. 50

Power to make rules.

18. It shall be lawful for the Judges of the Supreme Court to make rules for regulating the ordinary guidance of executors or administrators in relation to real estate, and for prescribing the forms of probate or letters of administration, and for regulating the practice in obtaining a grant of probate or letters of administration, and the procedure and practice of the Court and the duties of the Registrar, and 55 60

generally for carrying the provisions of this Act into effect, and to revoke, amend, add to, or alter any such rules as to them may seem fit. All rules to be made under this Act shall be published in the *Government Gazette*, and shall be laid before both Houses of Parliament
 5 within ten days after their being promulgated, or, if Parliament be not then sitting, within the like time after Parliament shall thereafter assemble for the despatch of business.

19. When an estate of any intestate, of which administration shall have been or shall be granted to the Public Trustee, shall not
 10 exceed one hundred pounds after payment of debts, and such intestate shall have left any child or children under age, the Public Trustee may pay or cause to be paid the balance of such estate, either in one sum, or from time to time, as he thinks fit, after payment of the debts of such
 15 intestate, to his widow or to any person having the care or custody of his children, without seeing to the application thereof, and without incurring any liability in respect of such payment, and shall certify to an account in favour of such widow or other person accordingly.

Public Trustee may pay balance of estate not exceeding £100 to widow of intestate.

20. It shall be lawful for the Supreme Court to allow out of the assets of any deceased person, to his executor, administrator, or trustee
 20 for the time being, in passing his accounts, such commission or percentage, not exceeding five pounds per centum, for his pains and trouble, as shall be just and reasonable. No such allowance shall be made to any executor, administrator, or trustee who shall neglect or omit, without a special order of the Supreme Court or a Judge, to pass
 25 his accounts pursuant to any general or special rule or order of the Supreme Court.

Executors, &c., may be allowed commission.

21. Every person to whom a grant of administration shall be made shall, previous to the issue of such administration, execute a
 bond to the Registrar of the said Court to inure for the benefit of the
 30 Registrar for the time being, with two sureties approved of by a Judge of the Court, conditioned for duly collecting, getting in, and administering the real and personal estate of the deceased, which bond shall be in such form as the Judges of the said Court shall by rule direct, and in the meantime shall be in the form heretofore in use:
 35 Provided that it shall not be necessary for the Public Trustee, or for any person obtaining administration to the use or for the benefit of Her Majesty, to execute any such bond.

Administration bond to be executed.

22. Such bond shall be in a penalty equal to the amount under which the property of the deceased shall be sworn if such amount
 40 shall not exceed *five thousand* pounds, and shall be in a penalty of *five thousand* pounds where such amount shall exceed that sum; but the Court may in any case dispense with one or both of the sureties, or direct that such penalty shall be reduced in amount, and may also, if it shall think fit, direct that more bonds than one shall be given, so
 45 as to limit the liability of any surety to such amount as the Court shall think reasonable, and may, in place of such bond, accept the security of any incorporated company or guarantee society, approved by the Governor in Council, in such form and under such regulations as the Judges of the said Court shall from time to time by rule
 50 direct.

Amount of penalty in administration bond.

23. Every executor or administrator to whom lands shall pass under the provisions of this Act shall make and exhibit the like
 accounts in reference to such lands, and shall be liable to the like penalties for neglect as may for the time being be required to be
 55 entered into, made, or exhibited by, or as may be enforced against any person to whom letters of administration of the personal estate of any person dying intestate is granted by the said Court: Provided that in case of an administrator one bond shall be sufficient as to both real and personal property.

Executor or administrator to exhibit accounts.

Proceedings where conditions of bond broken.

24. The Court may, on application made on motion in a summary way, and on being satisfied that the condition of any such bond has been broken, order the Registrar to assign the same to some person to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue upon the said bond in his or their own name or names, as if the same had been originally given to him, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the said bond.

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Trustee may relinquish trust in certain cases.

25. No executor or administrator shall be required, against his own consent, to continue the duty of a trustee by managing the property during an enforced suspension of sale, but shall be entitled, upon such suspension being ordered, to relinquish his trust to such officer of the Court, or to the Public Trustee, or to any other person as the Court shall appoint.

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Executor or administrator acting *bond fide* protected.

26. No executor or administrator acting under the provisions of this Act, who shall make any payment or do any act *bond fide* under or in pursuance of any letters of administration or probate as aforesaid, shall be liable for the sums so paid or the acts so done by reason of the existence of any will of the deceased owner, or any such will other than that of which probate has been granted if the existence of such will or such other will, as the case may be, was unknown to him at the time of such payments made or act *bond fide* done as aforesaid: Provided that nothing herein contained shall affect or prejudice the rights of any person entitled under such will against the person to whom any such payments shall have been made as aforesaid, but the person so entitled shall have the same remedy against the person of whom such payments shall have been made as he would have had against such personal representative if the money had not been distributed under the provisions of this Act.

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Caveat may be lodged.

27. Any person may lodge with the Registrar a caveat against any application for probate or administration at any time previous to such probate or administration being granted, and every such caveat shall set forth the name of the person lodging the same, and an address within the judicial district at which notices may be served on him.

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Where a caveat lodged, Court may grant order *nisi*.

28. In every case in which a caveat shall be lodged, the Court may, upon motion on behalf of the person applying for probate or administration, supported by affidavits upon which, if there had been no caveat, probate or administration would have been granted, make an order *nisi* for the grant of probate or administration to the person applying, and every such order shall name a time for showing cause against the same, and the Court may enlarge such order from time to time.

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Service of order *nisi*.

29. Every such order *nisi*, and every order enlarging the same, shall be served on the caveator, by delivering a copy of the same at the address mentioned in his caveat.

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Proceedings where caveator does not appear.

30. If upon the day named in the order *nisi*, or upon the day to which such order shall have been enlarged, the caveator do not appear, such order *nisi* may be made absolute, upon an affidavit of service, but, if the caveator appear, the hearing shall be conducted in the same manner, as nearly as may be, as upon a trial at law, and the order *nisi* may be made absolute or discharged, with or without costs as may be just, and, if the Court shall so direct, such costs may be paid out of the estate.

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Evidence on hearing of order *nisi*.

31. Upon the hearing of any order *nisi*, the parties shall be at liberty, subject to regulations to be made by such rules as aforesaid, to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf

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of such opposite party orally in open Court, and after such cross-examination may be examined orally in open Court by or on behalf of the party by whom such affidavit was filed.

5 32. If any question of fact shall arise in any proceeding under this Act, the Court may, if it shall think fit, cause the same to be tried by a jury before the Court itself, or before any Judge of the Court, and may settle an issue for that purpose. In such case the subsequent proceedings in respect of such issue shall be the same as if it had been settled in an ordinary action.

Questions of fact to be tried by a jury.

10 33. In any case in which a caveat is lodged by the Public Trustee, the Court may, if it thinks fit, order costs to be paid to the said Public Trustee out of the estate, whether the rule nisi be discharged or not.

Where caveat lodged by Public Trustee, costs may be paid out of estate.

15 34. In any case where the executor named in a will shall neglect or refuse to prove the same, or renounce probate thereof, within six weeks from the death of the testator, the Court may, upon the application of any person interested in the estate, or of the Public Trustee, or of any creditor of the testator, grant an order nisi, calling upon the executor to show cause why probate of the said will should not be granted to such executor, or, in the alternative, why administration, with such will annexed, should not be granted to the applicant; and upon affidavit of service of such order if the executor do not appear, or upon cause being shown, it shall be lawful for the Court to make such order thereon for the administration of the estate, and to make
20 such order as to costs, as shall appear just.

Proceedings where executor neglects to prove will.

25 In cases where the Public Trustee applies, and the executors or any of them are out of the colony, the Court may exercise the powers given by this section and grant administration to the Public Trustee with the will annexed, without first granting a rule nisi calling upon
30 any executor who is out of the colony to show cause.

35 35. Where, after this Act comes into operation, any illegitimate person dies intestate without leaving any legitimate child, or legitimate issue of such child him surviving, the persons to succeed to the real and personal property of such illegitimate person shall be as follows:—

Succession where person is illegitimate.

(1.) If the illegitimate person is a male—

(a.) His widow, if she survive him, shall take one moiety, and his mother the other moiety. If his mother be dead, such moiety shall go to and be divided amongst the person or persons who upon her intestacy would be entitled to her personal estate, and such person or persons shall in all respects have the same shares, estates, powers, and interests therein as he or they would have in her personal estate in case of intestacy.

(b.) If the illegitimate person leave no widow, then his mother shall succeed to the whole of his property, or if she be dead, the same shall go to and be divided amongst the person or persons who upon her intestacy would be entitled to her personal estate, and such person or persons shall in all respects have the same shares, estates, powers, and interests therein as he or they would have in her personal estate in case of intestacy.

(2.) If the illegitimate person is a female—

(a.) Her husband if he survive her, shall take one moiety, and her illegitimate children or their issue shall succeed to the other moiety, as if such children were legitimate.

(b.) If the illegitimate person leave no husband, her illegitimate children or their issue shall take the whole, as if such children were legitimate.

(c.) If the illegitimate person leave no husband or illegitimate children, or their issue, the mother of such illegitimate person shall take the whole, and if she be dead,

the same shall go to and be divided amongst the person or persons who upon her intestacy would be entitled to her personal estate, and such person or persons shall in all respects have the same shares, estates, powers, and interests therein as he or they would have in her personal estate in case of intestacy. 5

Illegitimate children succeed to mother where no legitimate children or husband.

36. Where, after this Act comes into operation, any female shall die intestate, leaving no husband or legitimate children, or their issue her surviving, but leaving illegitimate children or their issue, such illegitimate children or their issue shall succeed to her real and personal property in all respects as if such children were legitimate. 10

Schedules.

SCHEDULES.

FIRST SCHEDULE.

“THE REAL ESTATE DESCENT ACT, 1874.”

RULE 4 of the rules touching the administration of estates of persons deceased, mentioned in an Ordinance of the Governor and Legislative Council of New Zealand, Session IV., No. 1.

SECOND SCHEDULE.

In the Supreme Court }
of New Zealand. }

The day of , 18 .

UPON reading the affidavits of , it is ordered that the Public Trustee shall be administrator of all the real and personal estate of deceased (*with the will of the said annexed*).