

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 18 September 1969.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Right Hon. Mr Marshall

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A BILL INTITULED

An Act to consolidate and amend certain enactments relating to the administration of the estates of deceased persons

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

1. Short Title and commencement—(1) This Act may be cited as the Administration Act 1969.

(2) This Act shall come into force on the first day of January, nineteen hundred and seventy-one.

5 2. Interpretation—(1) In this Act, unless the context otherwise requires,—

10 “Administration” means probate of the will of a deceased person, and includes letters of administration of the estate of a deceased person, granted with or without a will annexed, for general, special, or limited purposes, and in the case of a trustee corporation includes an order to administer and an election to administer:

15 “Administrator” means any person to whom administration is granted; and includes a trustee corporation in any case where it is deemed to be an executor or administrator by reason of having filed an election to administer:

20 “Commonwealth” means the Commonwealth of Nations; and includes every territory for whose international relations the Government of any country of the Commonwealth is responsible:

25 “Commonwealth country” means a country that is a member of the Commonwealth; and includes every territory for whose international relations the Government of that country is responsible:

“Court” means the Supreme Court; and includes a Judge of that Court:

30 “Estate” means real and personal property of every kind, including things in action:

“Intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate:

35 “Maori” means a Maori within the meaning of the Maori Affairs Act 1953:

40 “Personal chattels”, in relation to any person who has died, means all vehicles, boats, and aircraft and their accessories, garden effects, horses, stable furniture and effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus,

wines, liquors, and consumable stores, which immediately before his death were owned by him or in which immediately before his death he had an interest as grantor under an instrument by way of security or as purchaser under a hire purchase agreement within the meaning of the Hire Purchase Agreements Act 1939, or under an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement; but does not include any chattels used exclusively or principally at the death of the intestate for business purposes or money or securities for money:

“Real estate” means lands, tenements, and hereditaments, corporeal or incorporeal, and whether in possession, reversion, remainder, or expectancy; and any estate or interest in them or any of them, whether freehold or chattel interests; and any possibility, right, or title of entry or action in or concerning them or any of them:

“Registrar” means the Registrar of the Supreme Court:

“Rules” means rules from time to time made under the authority of this Act:

“Securities” includes stocks, funds, shares, and convertible notes:

“Trustee company” means a trustee company within the meaning of the Trustee Companies Act 1967:

“Trustee corporation” means the Public Trustee or the Maori Trustee or any trustee company:

“Will” includes a codicil:

References to a child or issue living at the death of any person include a child or issue who is conceived but not born at the death but who is subsequently born alive.

(2) Nothing in this Act shall affect any special provision in any Act for the time being in force relating to the wills of Maoris or to the obtaining of administration of the estate of a deceased Maori or the distribution of the estate of a deceased Maori.

Cf. 1952, No. 56, s. 2

3. Act to bind Crown—This Act shall bind the Crown.

Cf. 1952, No. 56, s. 3

4. **Application of Parts I, II, and IV**—Except as otherwise provided in this Act, Parts I, II, and IV of this Act shall apply in every case, whether the death occurred before or after the commencement of this Act.

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PART I

ADMINISTRATION BY ADMINISTRATOR

Grant of Administration

5. **Probate jurisdiction of Supreme Court**—(1) The Court shall continue to have jurisdiction and authority in relation to the granting and revoking of probate of wills and letters of administration with or without a will annexed of the estates of deceased persons, and in regard to the hearing and determining of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

15 (2) Without restricting subsection (1) of this section or any other enactment, the Court shall have jurisdiction to make a grant of probate or letters of administration in respect of a deceased person, whether or not the deceased person left any estate in New Zealand or elsewhere, and
20 whether or not the person to whom the grant is made is in New Zealand.

Cf. 1952, No. 56, s. 4; Supreme Court of Judicature (Consolidation) Act 1925, s. 20 (U.K.); Administration of Justice Act 1932, s. 2 (U.K.)

25 6. **Discretion of Court as to person to whom administration is granted**—(1) In granting letters of administration with or without a will annexed, or an order to administer with or without a will annexed, in respect of the estate of any deceased person or any part thereof, the Court shall have regard to the
30 rights of all persons interested in the estate of the deceased person or the proceeds of sale thereof, and, in particular, administration with a will annexed may be granted to a devisee or legatee; and any such administration may be limited in any way the Court thinks fit:

35 Provided that, subject to the provisions of subsection (2) of this section, where the deceased died wholly intestate as to his estate, administration shall be granted to some one or more persons beneficially interested in the estate of the deceased, if they make an application for the purpose.

(2) Where by reason of the insolvency of the estate or other special circumstances the Court thinks it necessary or expedient to do so, it may—

(a) Grant administration to such person or persons as it thinks expedient notwithstanding that some other person is appointed an executor or that, apart from this subsection, some other person would by law be entitled to a grant of administration: 5

(b) Grant probate to one or more of the executors appointed by a will, notwithstanding that some other person or persons may also be appointed as an executor or executors. 10

(3) A grant may be made under subsection (2) of this section notwithstanding that any person excluded from the grant would be competent to take it. 15

(4) Before determining to exclude from any such grant any person who, apart from this section, would by law be entitled to, or be included in, the grant, and wishes to have, or to be so included in, the grant, the Court shall have regard to his competency and solvency, his ability effectively to administer the estate, the rights of all persons interested in the estate, and any changes in circumstances between the making of the will (if any) and the time when the Court is asked to make the grant. 20

Cf. Supreme Court of Judicature (Consolidation) Act 1925, s. 162 (U.K.) 25

7. Administration pending legal proceedings—(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any grant of administration, are pending, the Court may grant administration of the estate of the deceased to a temporary administrator, who shall, until he is discharged or removed under section 21 of this Act, have all the rights and powers of a general administrator, other than the right of distributing the balance of the estate remaining after payment of debts, funeral and testamentary expenses, duties, and fees, and every such temporary administrator shall be subject to the immediate control of the Court and act under its direction. 30 35

(2) The Court may, out of the estate of the deceased, grant to a temporary administrator appointed under this section such reasonable remuneration as the Court thinks fit. 40

Cf. Supreme Court of Judicature (Consolidation) Act 1925, s. 163 (U.K.)

8. Grant of special administration where administrator is out of New Zealand—

(1) If at any time after the death of a person any administrator of his estate is residing out of New Zealand, the Court may, on the application of any creditor or person interested in the estate, grant to him or some other person special administration of the estate of the deceased in such form and with such powers as the Court may direct or approve. Unless the Court otherwise directs, every grant of special administration shall continue until the administrator to whom the grant is made is discharged or removed under section 21 of this Act.

(2) While a grant of special administration of the estate of a deceased person remains in force the previously subsisting administration of that estate shall be deemed to be suspended, and the administrator thereunder shall not be liable for acts and things done by the administrator under the grant of special administration.

(3) The Court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into Court of any money or securities belonging to the estate, and all persons shall obey any such order.

(4) If the administrator capable of acting as such returns to and resides within the jurisdiction of the Court while any legal proceedings to which a special administrator is a party are pending, the administrator who so returns may be made a party to the legal proceedings, and the Court may order that the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as it may specify.

(5) Nothing in this section shall restrict section 21 of this Act.

Cf. Supreme Court of Judicature (Consolidation) Act 1925, s. 164 (U.K.)

9. Administration during minority of executor—(1) Where a person who is sole executor of a will is at the date of the testator's death a minor who is not entitled to a grant of probate under subsection (3) of this section, administration with the will annexed may be granted to such person as the Court thinks fit, until the minor becomes entitled to and obtains a grant of probate to him; and on his attaining full age or sooner becoming entitled to a grant of probate under that subsection and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints a person who at his death is a minor who is not entitled to a grant of probate under subsection (3) of this section to be an executor, the appointment shall not operate to transfer any interest in the estate of the deceased to the minor or to constitute him an administrator for any purpose, unless and until probate is granted to him under this section. 5

(3) Where a testator by his will appoints a person who is a minor to be an executor, probate of the will may be granted to the person if, at the date of the grant,— 10

(a) The person has attained full age; or

(b) The person has attained the age of eighteen years and is or has been married.

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(4) A minor to whom probate is granted under paragraph (b) of subsection (3) of this section shall have the same rights, powers, duties, and obligations as executor as he would have if he were of full age, and shall be liable accordingly for his acts and omissions as executor. 15

Cf. Supreme Court of Judicature (Consolidation) Act 1925, s. 165 (U.K.) 20

10. Administration with will annexed—Where the Court grants administration of the estate of a deceased person with the will annexed, the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor. 25

Cf. Supreme Court of Judicature (Consolidation) Act 1925, s. 166 (U.K.)

11. Cesser of right of executor to prove—(1) Where a person appointed executor by a will— 30

(a) Survives the testator but dies without having been granted probate of the will; or

(b) Is cited to take out probate of the will and does not appear to the citation; or

(c) Renounces probate of the will,— 35
his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of the testator's estate shall devolve and be committed as if that person had not been appointed executor.

(2) Where a person is appointed by a will to be both executor and trustee and his rights in respect of the executorship wholly cease under subsection (1) of this section, his rights in respect of the trusteeship shall also wholly cease and the trusteeship shall devolve or be determined as if he had not been appointed as trustee: 40 45

Provided that nothing in this subsection shall prevent his subsequent appointment as trustee.

Cf. Administration of Estates Act 1925, s. 5 (U.K.)

5 **12. Withdrawal of renunciation**—(1) Notwithstanding any-
thing to the contrary in section 11 of this Act, an executor
who has renounced probate (whether before or after the com-
mencement of this Act) may be permitted by the Court to
withdraw the renunciation and prove the will.

10 (2) Where an executor who has renounced probate has
been permitted (whether before or after the commencement
of this Act) to withdraw the renunciation and prove the
will,—

15 (a) The probate shall take effect and be deemed always to
have taken effect without prejudice to the previous
acts and dealings of and notices to any other person
to whom administration has been granted, and a
memorandum of the subsequent probate shall be
endorsed on the original grant of administration:

20 (b) His rights (if any) in respect of the trusteeship shall
revive except so far as the Court otherwise orders.

Cf. Administration of Estates Act 1925, s. 6 (U.K.)

13. Executor of executor represents original testator—

(1) An executor of a sole or last surviving executor of a testa-
tor shall be the executor of that testator:

25 Provided that for the purposes of the foregoing provisions of
this subsection a person who does not prove the will of his
testator shall be deemed not to be an executor notwithstanding
his appointment as such by the will and in the case of
30 an executor who on his death leaves surviving him some other
executor of his testator who at the time of the testator's death
has not proved but who afterwards proves the will of that
testator, it shall cease to apply when probate to the surviving
executor is granted.

35 (2) So long as the chain of representation is unbroken, the
last executor in the chain is the executor of every preceding
testator.

(3) The chain of representation is broken by—

40 (a) The failure to leave a will; or
(b) The failure of a testator to appoint an executor; or
(c) The failure to obtain probate of a will,—
but is not broken by a temporary grant of administration if
probate is subsequently granted.

(4) Every person in the chain of representation to a testator—

- (a) Has the same rights in respect of the estate of that testator as the original executor would have had if living; and
- (b) Is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

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Cf. Administration of Estates Act 1925, s. 7 (U.K.)

14. Notice to be sent to Public Trustee of applications for administration—(1) Forthwith upon the filing in the office of the Supreme Court of an application by any applicant other than the Public Trustee for administration of the estate of a deceased person or of an election to administer any such estate, it shall be the duty of the Registrar to give to the Public Trustee at Wellington a notice stating—

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(a) The date of the filing, and the date (if any) of the hearing;

(b) The full name of the deceased;

(c) Whether the deceased person died testate or intestate, and, if testate, the date of the will.

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(2) Without restricting the manner in which any such notice may be given, it is hereby declared that any such notice shall be sufficient if it is given by telegram.

Cf. 1952, No. 56, s. 5

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15. Administration bond—(1) Every person to whom a grant of administration (other than the probate of a will) is made shall, previously to the issue thereof, execute a bond to the Registrar of the Supreme Court to enure for the benefit of the Registrar for the time being, with two sureties approved by the Court, conditioned for duly collecting, getting in, and administering the estate of the deceased, which bond shall be in such form as may be prescribed by rules:

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Provided that it shall not be necessary for any trustee corporation or any person obtaining administration to the use or for the benefit of Her Majesty, to execute any such bond; and in any case in which the Court is willing to dispense with sureties under subsection (2) of this section it may if it thinks fit dispense with the bond.

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(2) In every case in which a bond is required under subsection (1) of this section, the bond shall be in a penalty equal to the amount under which the estate of the deceased is sworn, if that amount does not exceed twenty thousand dollars, and shall be in a penalty of twenty thousand dollars where the amount exceeds that sum; but the Court may in any case dispense with one or both of the sureties, or direct that the penalty be reduced in amount, and may also if it thinks fit direct that more bonds than one be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

(3) The bond required as aforesaid shall relate to both real and personal estate.

(4) The Court may, in any case if it thinks fit, in place of a bond, accept a security in favour of the Registrar of any corporation or guarantee society approved by the Governor-General in Council or the security of the State Insurance General Manager.

(5) Every such security shall be in such form and under such regulations as the rules direct.

Cf. 1952, No. 56, s. 6

16. Proceedings if condition of bond broken—The Court may, on being satisfied that the condition of any such bond or security has been broken, order the Registrar to assign the bond or security to some person to be named in the order; and that person or his administrator may thereupon sue upon the bond or security in his own name as if the bond or security 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 bond or security.

Cf. 1952, No. 56, s. 7

17. Administration as evidence—Every administration of a will or with a will annexed shall be evidence of that will upon all questions concerning real estate in the same manner and to the same extent as in questions concerning personal estate; and every administration shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of the death of the testator or intestate.

Cf. 1952, No. 56, s. 8

18. Certificates of administration—(1) Subject to the provisions of subsection (2) of this section, at any time after the grant of the relevant administration the Registrar may, on the request of the administrator, issue under his hand and seal such number of certificates of administration, in the form set out in the First Schedule to this Act, as may be required. 5

(2) No such certificate shall be released until the Registrar is satisfied, by the production of the probate or letters of administration or of other satisfactory evidence, that the Commissioner of Inland Revenue has released the probate or letters of administration under section 43 of the Estate and Gift Duties Act 1968: 10

Provided that, on request as aforesaid, the Registrar may complete any such certificate and send it to the Commissioner of Inland Revenue for release by the Commissioner with the probate or letters of administration. 15

(3) Every such certificate shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of death of the testator or intestate and of the grant of administration to the administrator for all purposes including registering the administrator as proprietor of any estate or interest in any land under the Land Transfer Act 1952, or of any mining privilege under the Mining Act 1926, or of any securities issued by or property in any bank or company or body or association. No District Land Registrar or Mining Registrar or bank or company or body or association to which any such certificate is produced shall be concerned to inquire concerning the trusts on which the administrator holds any such land or mining privilege or securities or property, or (except where a caveat has been lodged under the authority of the Land Transfer Act 1952) as to his authority to transfer or deal with the same. 20 25 30

(4) The fee payable to the Registrar in respect of each such certificate shall be one dollar or such other amount as may from time to time be prescribed by the Governor-General by Order in Council. 35

Cf. 1952, No. 56, s. 8A; 1957, No. 38, s. 2 (1)

19. Proceedings where executor neglects to prove will—

(1) In any case where any executor named in a will neglects or refuses to prove the will, or to renounce probate thereof, within three months from the death of the testator, the Court
5 may, upon the application of any other executor or executors or of any person interested in the estate or of the Public Trustee or of the Maori Trustee or of any creditor of the testator, grant an order *nisi* calling upon the executor who so neglects or refuses to show cause why probate of the will should not be
10 granted to that executor alone or with any other executor or executors or, in the alternative, why administration should not be granted to the applicant or some other person.

(2) Upon proof (whether by affidavit or otherwise) of service of the order, or upon the Court dispensing with service
15 of the order, if the executor who is so called upon does not appear or upon cause being shown, the Court may make such order for the administration of the estate, and as to costs, as appears just.

(3) Where the Public Trustee or the Maori Trustee applies,
20 and any executor is out of New Zealand, the Court may exercise the power given by this section and grant administration to the Public Trustee or the Maori Trustee without first granting an order *nisi* calling upon any executor who is out of New Zealand to show cause.

(4) On the application of any executor who was out of New
25 Zealand when the grant under subsection (3) of this section without an order *nisi* was made, and who has not refused or renounced administration, the Court may grant probate to that executor, or if the Public Trustee is one of the
30 executors named in the will to the Public Trustee and that executor, in any manner and subject to any limitations or conditions that the Court thinks proper.

(5) No application under subsection (4) of this section shall be made until fourteen days after notice in writing of the
35 intention to apply has been left at the Office at Wellington of the Public Trustee or of the Maori Trustee, whichever received the prior grant.

Cf. 1952, No. 56, s. 9

20. When powers, etc., of Public Trustee or Maori Trustee to pass to executor—(1) Immediately on the grant of probate under subsection (4) of section 19 of this Act—

(a) All the powers, rights, discretions, and duties of the Public Trustee or the Maori Trustee (except those conferred or imposed by the Public Trust Office Act 1957 or the Maori Trustee Act 1953 and except also the rights reserved by this section) in relation to the testator's estate, and all liability of the Public Trustee or the Maori Trustee under any contract or agreement entered into by him, or otherwise affecting or relating to the estate or any part thereof, shall pass to the executor obtaining probate: 5 10

(b) No claim shall thereafter lie against the Public Trustee or the Maori Trustee in respect of any such liability: 15
 Provided that nothing in this paragraph shall apply where the Public Trustee is one of the executors named in the will:

(c) Subject to and on the allowance and payment of all money due for commission, necessary outlay, disbursements, costs, charges, and expenses affecting the estate, including the costs of and incidental to the application for probate, and consequent thereon, and subject also to the provisions of this section and (section 18) section 19 of this Act, such portion of the estate as is then unadministered by the Public Trustee or the Maori Trustee shall vest in the executor obtaining probate. 20 25

(2) Nothing in this section shall relieve the Public Trustee or the Maori Trustee from the consequences of his own devastavit. 30

Cf. 1952, No. 56, s. 10

21. Discharge or removal of administrator—(1) Where an administrator is absent from New Zealand for twelve months without leaving a lawful attorney, or desires to be discharged from the office of administrator, or becomes incapable of acting as administrator or unfit to so act, or where it becomes expedient to discharge or remove an administrator, the Court may discharge or remove that administrator, and may if it thinks fit appoint any person to be administrator in his place, on such terms and conditions in all respects as the Court thinks fit. 35 40

(2) The administrator so removed or discharged shall, from the date of that order, cease to be liable for acts and things done after that date.

5 (3) Upon any administrator being discharged or removed as aforesaid (whether or not any other administrator is appointed) all the estate and rights of the previous administrator or administrators which were vested in him or them as such shall become and be vested in the continuing administrator or administrators (including any administrator appointed under subsection (1) of this section) who shall have 10 the same powers, authorities, discretions, and duties, and may in all respects act, as if he or they had been originally appointed as the administrator or administrators.

15 (4) This section shall, with all necessary modifications, extend to the case where an administrator dies, and the powers and authorities hereby conferred may be exercised and shall take effect accordingly.

(5) Nothing in this section shall restrict section 8 of this Act.

Cf. 1952, No. 56, s. 11

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The Administering of Estates

22. Interim vesting of estate where no executor appointed—(1) Subject to the provisions of this Act and any other Act, where a person dies without leaving a will that effectively appoints an executor, his estate shall, until 25 administration is granted in respect thereof, vest in the Crown in the same manner and to the same extent as formerly in England in the case of personal property it vested in the ordinary.

30 (2) While any estate remains vested in the Crown in accordance with this section, the Crown Proceedings Act 1950 shall apply to the service on the Crown of notices and documents relating to the estate as if they related to civil proceedings instituted against the Crown.

Cf. Administration of Estates Act 1925, s. 9 (U.K.)

35 **23. Executor not to act while another administrator is in office**—Subject to the provisions of this Act and of any other Act, where administration has been granted in respect of any part of the estate of a deceased person, and is not for the

time being suspended, no person other than the administrator of that part of the estate shall have power to bring an action or otherwise act as administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked. 5

Cf. Administration of Estates Act 1925, s. 15 (U.K.)

24. Estate to vest in administrator—(1) Immediately upon the grant of administration of the estate of any deceased person, all the estate then unadministered of that person, whether held by him beneficially or held by him in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that person: 10

Provided that nothing in this section shall affect the earlier vesting in an executor by operation of law.

(2) The title of every administrator to any part of the estate of a deceased person, whether he has died before or after the commencement of this Act, shall relate back to and be deemed to have arisen immediately upon the death of the deceased person, as if there had been no interval of time between the death and the grant of administration. 15 20

(3) If there are concurrently more administrators than one of any part of the estate that part shall vest in them as joint tenants.

Cf. 1952, No. 56, s. 12

25. How estate to be held by administrator—Subject to the provisions of this Act, the administrator shall hold— 25

- (a) The estate of any person who dies or has died either before or after the commencement of this Act leaving a will according to the trusts and dispositions of the will, so far as the will affects that estate: 30
- (b) The estate of any person who dies after the commencement of this Act intestate as to that estate according to the provisions of Part III of this Act:
- (c) The estate of any person who has died before the commencement of this Act intestate as to that estate according to the provisions of the enactments and law which would have applied thereto if this Act had not been passed. 35

Cf. 1952, No. 56, s. 13

26. Estate to be assets for payment of debts, etc.—The whole of the estate of every deceased person shall be assets in the hands of his administrator for the payment of all duties and fees payable under any Act imposing or charging duties
5 or fees on the estates of deceased persons, and for the payment in the ordinary course of administration of his debts and of debts properly incurred by his administrator; and for those purposes the administrator may, in as full and effectual a
10 manner in law as the testator or intestate could have done in his lifetime, sell, lease (with or without an optional or compulsory purchasing clause), or mortgage (with or without a power of sale), the estate, or any part thereof.

Cf. 1952, No. 56, s. 14

27. Power of sale on intestacy—(1) On the death of a
15 person intestate as to any real or personal estate, his administrator shall have power to sell that real estate and to call in, sell, and convert into money such part of that personal estate as may not consist of money, with power to postpone the sale, calling in, and conversion for such a period as the adminis-
20 trator, without being liable to account, may think proper, and so that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold under this section except for special reason.

(2) This section shall have effect notwithstanding that the
25 administrator has ceased to hold the real or personal estate as administrator and holds it as trustee.

(3) Where the deceased leaves a will this section shall have effect subject to the provisions contained in the will.

Cf. 1952, No. 56, s. 23

30 28. Method of sale or lease—The provisions of sections 14 to 18 of the Trustee Act 1956 shall, so far as they are applicable and with any necessary modifications, apply to any sale or lease under sections 26 and 27 of this Act as if the sale or lease were under the said sections 14 to 18 of the
35 Trustee Act 1956:

Provided that nothing in this section shall restrict the term of any lease which may be granted under section 26 of this Act:

40 Provided also that land of any value may be sold or leased under section 26 of this Act, or may be sold under section 27 of this Act without the consent of the Court.

Cf. 1952, No. 56, ss. 14, 15

29. Administrator to represent real estate—In all actions concerning the real estate of a deceased person, his administrator shall represent his real estate and the persons interested therein in the same manner and to the same extent as, in actions concerning personal estate, the administrator represents that estate and the persons interested therein. 5

Cf. 1952, No. 56, s. 18

30. Rights and duties of administrator as to real estate—The administrator of any deceased person shall have the same rights and be subject to the same duties and liabilities with respect to the real estate of that person as he has and is subject to with respect to the personal estate of that person, and shall perform the duties imposed on the administrator by any Act imposing or charging duties or fees or liabilities on the estates of deceased persons. 10 15

Cf. 1952, No. 56, s. 20

31. Payment of claims where estate insufficient—Where the estate within the meaning of Part XVII of the Insolvency Act 1967 of any deceased person is insufficient to pay his debts, funeral, and testamentary expenses in full, it shall be lawful for the administrator to apply that estate in accordance with the priorities that would be applicable if it were being administered under that Part, without the administrator being under any obligation to have recourse to that Part or to administer that estate thereunder, and any surplus shall be held for the person or persons lawfully entitled thereto. 20 25

Cf. 1957, No. 36, s. 104

32. Administration suits—(1) In any case where the assets of any deceased person are being administered by the Court (whether the person has died before or after the commencement of this Act) if his estate proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall apply and be observed as would be applicable if the estate were being administered under Part XVII of the Insolvency Act 1967, and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of the deceased person may come in under the decree or order for the administration of the estate and make such claims against it as they may respectively be entitled to by virtue of that Part and this Act. 30 35 40

(2) In any action or other proceeding for the administration by the Court of the estate of any deceased person, no Court shall have jurisdiction to order or allow payment of costs out of the estate to the party responsible for the commencement or continuance of the action or proceeding, unless the Court first certifies that there were reasonable grounds for the action being commenced or continued, and then only to the extent to which the continuance was necessary.

Cf. 1952, No. 56, ss. 46, 47

10 **33. Debts under deeds and simple contracts to stand in equal degree**—Subject to the provisions of this Act and of any other Act, in the administration of the estate of every person who has died, whether before or after the commencement of this Act, no debt or liability of the person shall be entitled to any
15 priority or preference by reason merely that it arises under a bond, deed, or instrument under seal; but all the creditors of that person shall be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, whether those assets are legal or equitable:

20 Provided that nothing in this section shall prejudice or affect any lien, charge, mortgage, or other security which any creditor may hold or be entitled to for payment of his debt or liability.

Cf. 1952, No. 56, s. 21

25 **34. Charges on property of deceased to be paid primarily out of the property charged**—(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property, or where an interest in property passes by survivorship on the
30 death of a person, and at the time of his death the interest is charged with the payment of money, whether by way of mortgage, charge, or otherwise, and the deceased has not by will, deed, or other document signified a contrary or other intention, the interest so charged shall, as between the different persons
35 claiming through the deceased, be primarily liable for payment of all amounts charged thereon; and every part of the said interest, according to its value, shall bear a proportionate part of the amounts charged on the whole thereof:

40 Provided that, where a person dies possessed of or entitled to an interest in any personal chattels that passes under the will or on the intestacy of the person to the person's husband or wife, nothing in this subsection shall apply to that interest in those personal chattels.

(2) Such a contrary or other intention shall not be deemed to be signified—

(a) By a general direction for payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate, or his residuary personal estate; or 5

(b) By a charge of debts upon any such estate— unless that intention is further signified by words expressly or by necessary implication referring to all or some part of the charge on the interest in property. 10

(3) Nothing in this section shall affect the right of a person entitled to the payment with which the interest in property is charged to obtain payment or satisfaction thereof out of the other assets of the estate or otherwise. 15

Cf. 1952, No. 51, s. 149; Administration of Estates Act 1925, s. 35 (U.K.)

35. Bequests to include articles held under hire purchase agreements—Where any person, immediately before his death, had an interest as purchaser under a hire purchase agreement within the meaning of the Hire Purchase Agreements Act 1939 of any goods within the meaning of that Act, or an interest as purchaser of any such goods under an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement, if the person has by his will made a bequest in terms which would have included the goods if he had owned them immediately before his death, the bequest shall take effect, unless the context otherwise requires, as if he then owned the goods and as if any amount owing in respect thereof were a charge thereon. 20 25 30

36. Application of sections 34 and 35—Sections 34 and 35 of this Act shall not apply to any will made before the first day of January, nineteen hundred and seventy-one. 35

(2) For the purposes of this section every will which is re-executed or confirmed or revived by any codicil shall be deemed to have been made at the time when it was first made, and not at the time when it was re-executed or confirmed or revived. 40

(3) Section 149 of the Property Law Act 1952 is hereby amended by adding the following subsection:

“(4) Nothing in this section shall apply to any will made on or after the first day of January, nineteen hundred and
5 seventy-one.”

37. Liability of specific devise or bequest where estate primarily liable is insufficient—If any testator's estate primarily liable for the payment of his debts is insufficient for that purpose, each of his specifically devised or bequeathed
10 estates (if more than one) shall be liable to make good the deficiency, in the proportion that the value of each of those estates bears to the aggregate value of the specifically devised or bequeathed estates of the testator.

Cf. 1952, No. 56, s. 22

38. Proving executors may exercise powers—Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or
15 other to prove, all the powers which are conferred by law or by the will on the administrator may be exercised by the
20 proving executor or executors for the time being, and shall be as effectual as if all the persons named as executors had concurred therein.

Cf. Administration of Estates Act 1925, s. 8 (U.K.)

39. Interest on legacies and annuities—(1) In any case
25 where a legacy is charged upon both land and chattels, unless the will otherwise provides, interest shall be payable on the legacy and be a charge on the land and chattels in accordance with the rules of law that would apply if the legacy were charged upon the land only.

(2) While interest is payable on any legacy or on any
30 arrears of an annuity, in accordance with the will or instrument pursuant to which the legacy or annuity is payable or any enactment or rule of law, unless the will or instrument otherwise provides or the Court otherwise orders, the interest
35 on the legacy or arrears of the annuity shall be payable at the rate for the time being prescribed by the Governor-General by Order in Council, and while no such Order in Council is in force at the rate of five percent per annum:

Provided that, where an administrator (in accordance with any power conferred on him in that behalf) appropriates any property in or towards satisfaction of any legacy (other than an annuity), the legatee shall be entitled to the income from the property so appropriated, and interest shall not be payable out of any other part of the estate on so much of the legacy as has been satisfied by the appropriation. 5

(3) (*The foregoing provisions*) Subsection (1) of this section shall not apply in any case where the will or instrument pursuant to which a legacy (*or an annuity*) is payable was made before the commencement of this Act, whether or not the testator (in the case of a will) dies after the commencement of this Act. 10

40. No right of retainer by administrator—No person, being a creditor in his own right or as a trustee of any estate of which he is administrator, shall, by virtue of his office as administrator, have any right of retainer in priority to the other creditors of the estate in respect of any debt due to him; but every such creditor 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 the administrator. 15 20

Cf. 1952, No. 56, s. 26

41. Rights and liabilities of administrator—Every person to whom administration of the estate of a deceased person is granted, other than an executor, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased. 25

Cf. Administration of Estates Act 1925, s. 21 (U.K.) 30

42. Liability of agent of administrator—No person appointed an administrator upon an application made by him as the attorney or agent for an administrator absent from New Zealand shall be liable to account or pay money, or transfer property, to any one in respect of his administratorship excepting only to the administrator whose attorney or agent he was, or to any person who, after his appointment as administrator upon an application so made, is appointed administrator of the same estate. 35

Cf. 1952, No. 56, s. 27

43. **Administrator's right to distrain**—(1) An administrator may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(2) An administrator may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. Any such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

(a) Within six months after the termination of the lease or tenancy; and

(b) During the continuance of the possession of the lessee or tenant from whom the arrears were due.

(3) The enactments relating to distress for rent shall apply to any distress made pursuant to subsection (2) of this section.

20 Cf. Administration of Estates Act 1925, s. 26 (3), (4) (U.K.)

44. **Administrator may be required to exhibit inventory**—Every administrator shall, when required by the Court so to do, exhibit on oath in the Court a true and perfect inventory and account of the estate of the deceased; and the Court shall have power as heretofore to require administrators to bring in inventories.

Cf. 1952, No. 56, s. 28; Administration of Estates Act 1925, s. 25 (U.K.)

30 45. **Protection of persons acting on administration**—

(1) Every administrator or person who makes any payment or disposition or assumes any liability, or who permits any payment or disposition to be made, or who does any act, or who permits any act to be done, in good faith under an administration shall, notwithstanding any defect or circumstances whatsoever affecting the validity of the administration or its subsequent revocation, have the same indemnity and protection in so doing and in respect of all commission and remuneration earned by him in so doing, as he would 40 if the administration were valid and not revoked.

(2) Where an administration is revoked, all payments and dispositions made in good faith to an administrator before the revocation thereof shall be valid discharges to the person

making the same; and the administrator who acted under the revoked administration may retain and reimburse himself out of the estate that comes into his hands in respect of any acts, payments, dispositions, liabilities, commission, and remuneration in respect of which he is indemnified as aforesaid or which the person to whom administration is afterwards granted might have properly made. 5

(3) Nothing in subsection (1) of this section shall affect or prejudice the rights of any person entitled to any money or property that has been the subject of a payment or disposition to which that subsection relates against any person (other than the administrator in that capacity) to whom the payment or disposition has been made, but the person so entitled shall have the same remedy against the person (other than the administrator in that capacity) to whom the payment or disposition was made as he would have had against the administrator if the payment or disposition had not been made. 10 15

(4) Nothing in this section shall restrict section 51 of this Act. 20

Cf. 1952, No. 56, s. 30; Administration of Estates Act 1925, s. 27 (U.K.)

46. Interpretation of sections 47 to 50—In sections 47 to 50 of this Act—

“Application” includes an action and every other form of legal proceedings; and the terms “apply” and “applicant” have corresponding meanings: 25

“Distribution” includes a sale, letting, or other disposition or alienation pursuant to an option granted or directed or authorised to be granted by a will or by any instrument creating a trust in any case where the consideration for the sale, letting, or other disposition or alienation is less than the administrator or trustee might reasonably have been expected to require if the option had not been so granted or directed or authorised to be granted; and also includes a forgiveness or release of a debt or other liability or a release of any security therefor which, by a will or any instrument creating a trust, is given or directed or authorised to be given for less than full valuable consideration: 30 35 40

“Order” includes a judgment.

Cf. 1952, No. 56, s. 30A (8); 1960, No. 100, s. 2

47. Protection of administrator against certain claims—

- (1) This section shall apply to applications and orders—
- (a) Under the Family Protection Act 1955;
 - (b) Under the Law Reform (Testamentary Promises) Act 1949;
 - (c) Under subsection (3) of section 12 or section 40 or section 41 or subsection (2) of section 47 or subsection (6) of section 52 or subsection (1) of section 57 or subsection (1) of section 62 of the Matrimonial Proceedings Act 1963;
 - (d) Under section 5 of the Matrimonial Property Act 1963;
 - (e) Under subsection (3) of section 24 of the Domestic Proceedings Act 1968; and
 - (f) Arising out of contracts to make a will containing certain provisions or not to revoke an existing will or specified provision therein or not to make a will.
- (2) No action shall lie against the administrator or trustee of the estate of any deceased person by reason of his having distributed any part of the estate, and no application or order to which this section applies shall disturb the distribution, if it was properly made, in accordance with subsection (2) of section 48 of this Act, by the administrator or trustee for the purpose of providing for the maintenance, support, or education of any person who was totally or partially dependent on the deceased immediately before the death of the deceased, whether or not the administrator or trustee had notice at the time of the distribution of any application or intention to make any application that would affect the estate, being an application to which this section applies.
- (3) No person who may have made or may be entitled to make an application to which this section applies shall be entitled to bring an action against the administrator or trustee by reason of his having distributed any part of the estate if the distribution was properly made, in accordance with subsection (2) of section 48 of this Act, by the administrator or trustee after the person (being of full legal capacity) has advised the administrator or trustee in writing or acknowledged in any document that the person either—
- (a) Consents to the distribution; or
 - (b) Does not intend to make any application that would affect the proposed distribution.

(4) No action shall lie against the administrator or trustee by reason of his having distributed any part of the estate if the distribution was properly made, in accordance with subsection (2) of section 48 of this Act, by the administrator or trustee after the expiration of six months from the date of the grant in New Zealand of administration in the estate of the deceased, and before service on him of any application, and without notice in writing of any application or intention to make an application that would affect the estate, being an application to which this section applies. 5 10

Cf. 1952, No. 56, s. 30A; 1960, No. 100, s. 2

48. Notices and distributions—(1) For the purposes of this section and of section 47 of this Act, notice in writing to an administrator or trustee of an intention to make any application to which section 47 of this Act applies shall lapse and shall be incapable of being renewed, so as to impose liability on the administrator or trustee in respect of a distribution thereafter, and the administrator or trustee may act as if he had not received the notice, unless, before the expiration of three months after the date on which he first receives notice in writing of the intention to make the application, the administrator or trustee is served with a copy of the application or receives notice in writing that the application has been made to the Court: 15 20

Provided that nothing in this subsection shall prevent the subsequent making of the application within the period allowed by law. 25

(2) Notwithstanding the provisions of section 8 of the Family Protection Act 1955, for the purposes of sections 47 and 51 of this Act, a distribution by an administrator or trustee of any part of the estate shall be deemed to be properly made if it is made in accordance with any trust, power, or authority which is subsisting when the distribution is made and would justify the distribution if each application to which section 47 of this Act applies in connection with the estate (being an application on which no order had been made before the distribution) were disallowed by the Court: 30 35

Provided that nothing in this subsection shall restrict the provisions in subsection (4) of section 47 of this Act requiring that the distribution shall have been made before service on him of a copy of any application and without notice in writing of the matters specified in that subsection. 40

Cf. 1952, No. 56, s. 30A (6), (7); 1960, No. 100, s. 2

5 **49. Following of assets, etc.**—(1) In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust and there is nothing in any Act to prevent the distribution from being disturbed, the Court may—

- 10 (a) Make, subject to such terms and conditions as it thinks fit, in respect of any interest in any such assets that is for the time being retained by the person to whom those assets were distributed or his administrator or any person who has received any interest in those assets from either of them otherwise than in good faith and for full valuable consideration, any order to which section 47 of this Act applies, or 15 an order on any claim to which section 35 of the Trustee Act 1956 applies, or an order requiring the transfer or payment of any such interest in any such assets to the administrator of the deceased or the trustee or to any person who in accordance with any enactment or rule of law has a right to follow 20 the assets:
- 25 (b) Order that any person to whom any assets were so distributed or his administrator shall pay to any applicant for an order to which section 47 of this Act applies or for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee or to any person who in accordance with any enactment or rule of law has a right to follow the assets a sum not exceeding the net value of the assets at the date of the distribution, or in a case where full 30 valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest thereon from that date until the date of the order at such rate as the Court may specify:
- 35 (c) Order that any person who has received any interest in any such assets from the person to whom they were distributed or his administrator, otherwise than 40 in good faith and for full valuable consideration, shall pay to any applicant for an order to which section 47 of this Act applies, or for an order on any claim to which section 35 of the Trustee Act 1956

applies, or to the administrator of the deceased or the trustee, or to any person who in accordance with any enactment or rule of law has a right to follow the assets, a sum not exceeding the net value of that interest at the date of the distribution, or in a case 5
 where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest thereon from that date until the date of the 10
 order at such rate as the Court may specify:

- (d) In making any such order fix such terms and conditions as the Court thinks fit, and for the purpose of giving effect to any such order, make such further order as it thinks fit. 15

(2) The remedies given to any person by subsection (1) of this section are in addition to all other rights and remedies (if any) available to that person, and nothing in that subsection shall restrict any such other rights and remedies.

(3) Subject to the provisions of subsection (4) of this section, no application for an order under subsection (1) of this section shall be heard by the Court,— 20

- (a) In the case of an application for an order under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, unless the 25
 application for an order under the said subsection (1) is made within twelve months from the date of the grant in New Zealand of administration in the estate:

Provided that, in the case of an application for 30
 an order under the Family Protection Act 1955 made by an administrator on behalf of a person who is not of full age or mental capacity, an application for an order under the said subsection (1) may be made within two years from the date of 35
 the grant in New Zealand of administration in the estate:

- (b) In the case of an application to which subparagraph (i) of paragraph (b) of section 50 of this Act applies, unless the application is made within one 40
 year after the satisfaction by the administrator or trustee of any claim in respect of any right or remedy against him:

(c) In any other case, unless the application for an order under the said subsection (1) is made within the time within which the applicant could have enforced his claim in respect of the estate without special leave of the Court if the assets had not been distributed:

5
10 Provided that, with the special leave of the Court, the application may be heard by the Court on an application made within the time within which the applicant could have enforced his claim in respect of the estate with special leave of the Court if the assets had not been distributed.

(4) Notwithstanding anything to the contrary in subsection (3) of this section, in any case where an administrator or trustee has made a distribution of any assets forming part
15 of the estate of any deceased person or subject to any trust, and any person who is entitled to apply for an order under subsection (1) of this section has, within the time specified in the said subsection (3), made an application to the Court for any order to which section 47 of this Act applies or an
20 order on any claim to which section 35 of the Trustee Act 1956 applies, and that person was not aware of the distribution at the time when he made that application, that person, or any other person on whose behalf that application is deemed to be made, may apply to the Court under the said subsection
25 (1), and the application may be heard by the Court after the expiration of the period prescribed by the said subsection (3) if it is made within six months after the date on which that person first became aware of the distribution.

50. Freedom to exercise remedies—Notwithstanding any
30 rule of law to the contrary, in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust—

(a) Any person may exercise the remedies (if any) given
35 to him by subsection (1) of section 49 of this Act and all other rights and remedies available to him (including all rights which he may have to follow assets and any money or property into which they have been converted) without first exercising the rights and remedies (if any) available to him
40 against the administrator or the trustee in consequence of the making of the distribution:

- (b) If any person exercises any right or remedy available against the administrator or the trustee in consequence of the distribution of any such assets, the administrator or trustee may—
- (i) Apply to the Court for any order which may be made under subsection (1) of section 49 of this Act: 5
- (ii) In any proceedings against him in respect of the exercise of any such right or remedy, by leave of the Court and in accordance with the rules of Court relating to such notices, issue a third party notice against any person against whom he may apply for an order under subparagraph (i) of this paragraph. 10

Cf. 1952, No. 56, s. 30B ss. (1)–(5); 1960, No. 100, s. 2 15

51. Restriction on following assets—In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, relief (whether under subsection (1) of section 49 of this Act or in equity or otherwise) against any person other than the administrator or trustee or in respect of any interest of any such person in any assets so distributed and in any money or property into which they have been converted, may be denied wholly or in part, if— 20

- (a) The person from whom relief is sought received the assets or interest in good faith and has altered his position in the reasonably held belief that the distribution was properly made and would not be set aside; and 25
- (b) In the opinion of the Court it is inequitable to grant relief or to grant relief in full, as the case may be. 30

Cf. 1952, No. 56, s. 30B (6); 1960, No. 100, s. 2

52. Liability of person fraudulently obtaining or retaining estate of deceased—If any person other than the administrator, to the defrauding of creditors or without full valuable consideration, obtains or receives or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming into his hands, or the debt or liability released, after deducting— 35 40

- (a) Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death which might properly be retained by an administrator; and
- 5 (b) Any payment made by him which might properly be made by an administrator.

Cf. Administration of Estates Act 1925, s. 28 (U.K.)

Powers and Procedure of Court

- 53. Direction to executor to prove or renounce, etc.**—The
- 10 Court shall have power to direct any person named as executor in a will to prove or renounce probate of the will, and (subject to this Act and any other enactment and the rules) to do such other things as it thinks fit concerning the granting and revocation of administration, and the hearing and deter-
- 15 mination of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

Cf. Supreme Court of Judicature (Consolidation) Act 1925, s. 159 (U.K.)

- 54. Production of instruments purporting to be testamen-**
- 20 **tary**—The Court may, whether any suit or other proceeding is or is not pending with respect to any administration, order any person to produce any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of that person; and if it is not shown that any
- 25 such paper or writing is in the possession or under the control of any person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct that person to attend for the purpose of being examined in open Court, or upon interrogatories, respecting the same; and that person shall be bound to answer
- 30 any such questions or interrogatories, and, if so ordered, to produce and bring in any such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering any such questions or
- 35 interrogatories, or not bringing in any such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made any such default; and the costs of any such suit or proceeding shall be in the discretion of the Court.

- 40 Cf. Court of Probate Act 1857, s. 26 (U.K.)

55. Continuance of legal proceedings after revocation of temporary administration—If, while any legal proceeding is pending in any Court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, the Court may order that the proceeding be continued by or against the new administrator in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as that Court directs. 5

Cf. Administration of Estates Act 1925, s. 17 (U.K.) 10

56. Question of fact may be tried by a jury—(1) If any question of fact arises in any proceeding under this Act, the Court may, if it thinks 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. 15

(2) In every such case the subsequent proceedings in respect of that issue shall be the same as if it had been settled in an ordinary action.

Cf. 1952, No. 56, s. 34

57. Practice of Court in its administration jurisdiction—The practice of the Court in regard to administration shall, except where otherwise provided by this Act or by the rules, be regulated, so far as the circumstances of the case will admit, by the practice of the Court heretofore in force. 20

Cf. 1952, No. 56, s. 35 25

58. Form of order to Public Trustee or Maori Trustee—Whenever the Court grants an order to the Public Trustee (either alone or together with any other person or persons) or to the Maori Trustee to administer the estate of any deceased person, the order shall be in the form in the Second Schedule to this Act or in such other form or forms as may be prescribed by the Governor-General by Order in Council. 30

Cf. 1952, No. 56, s. 36; 1957, No. 38, s. 4

59. Power to make rules—The power to make rules of Court under section 3 of the Judicature Amendment Act 1930 shall include power to make rules— 35

(a) Prescribing the forms of administration:

(b) Prescribing the practice in obtaining a grant of administration, and the procedure and practice of the Court and the duties of the Registrar: 40

- (c) Regulating the procedure and practice of the Court with respect to non-contentious or common form probate business:
- 5 (d) Regulating the procedure and practice of the Court with respect to contentious probate business:
- (e) Regulating the practice and procedure of the Court in relation to the resealing of probates or letters of administration under Part II of this Act, and in particular for the purpose of imposing upon persons applying thereunder for the resealing of probates or letters of administration, or relieving any such persons from, any requirements that may be imposed upon persons applying to the Supreme Court of New Zealand for original grants of probate or letters of administration:
- 10 (f) Prescribing orders of priority among applicants for administration which shall apply unless the Court in special circumstances otherwise directs:
- 15 (g) Generally for carrying the provisions of this Act into effect.
- 20

Cf. 1952, No. 56, ss. 37 and 53

Caveats

60. **Caveat may be lodged**—(1) Any person may lodge with the Registrar a caveat against any application for administration at any time previous to the granting of administration, and every such caveat shall set forth the name of the person lodging it, and an address within the district of the Court at which notices may be served on him.

25

(2) Every such caveat shall, unless application for administration is sooner made, lapse upon the expiration of one year from the date of the lodging of the caveat.

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(3) Any such caveat may be withdrawn by the caveator at any time by notice in writing lodged with the Registrar. A copy of every such notice shall be served on any person who has applied for administration or to whom an order *nisi*, under the provisions of section 61 of this Act, has been granted.

35

(4) Nothing in this section shall prevent any person who has lodged a caveat from lodging a subsequent caveat, whether or not any caveat previously lodged has lapsed or been withdrawn.

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Cf. 1952, No. 56, s. 38; 1965, No. 43, s. 2

61. Where a caveat lodged, Court may grant order nisi—In every case where a caveat has been lodged and has neither lapsed nor been withdrawn, the following provisions shall apply:

- (a) The Court may, upon application on behalf of the person applying for administration, supported by affidavits upon which, if there had been no caveat, administration would have been granted, make an order *nisi* for the grant of administration to the person applying, and every such order shall name a time and place for showing cause against the same, and the Court may enlarge any such order from time to time: 5
- (b) 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: 10
- (c) If before the day named in the order *nisi* or the day to which the order is enlarged the caveat is withdrawn, the order *nisi* may be made absolute at any time thereafter: 20
- (d) In any case to which paragraph (c) of this section does not apply, if on the day named in the order *nisi*, or on the day to which the order is enlarged, the caveator does not appear, the order *nisi* may be made absolute, upon an affidavit of service; but if the caveator appears, the hearing shall be conducted in the same manner as nearly as may be as in an ordinary action, and the Court may order— 25
- (i) That the order *nisi* be made absolute or discharged; or 30
- (ii) That the application for administration be made in solemn form,— 35
- and any order made under subparagraph (i) or subparagraph (ii) of this paragraph may be with or without costs, as may be just, and, if the Court so directs, those costs may be paid out of the estate: 40
- (e) Upon the hearing of the order *nisi* the parties may, subject to the rules, verify their 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 of the opposite party orally in open Court, 40

and after cross-examination may be re-examined orally in open Court by or on behalf of the party by whom the affidavit was filed:

- 5 (f) In any case where a caveat is lodged by the Public Trustee, the Court may, if it thinks fit, order costs to be paid to him out of the estate, whether the order *nisi* is discharged or not.

Cf. 1952, No. 56, s. 39; 1965, No. 43, s. 3

Miscellaneous Provisions

- 10 **62. Succession to, capacity of, and construction of wills of, married women and minors in certain cases—**(1) Notwithstanding anything to the contrary in this Act or in any other Act or in any rule of law, where any person to whom this section applies dies intestate in respect of any movable
15 property in New Zealand, the succession to and distribution of that property shall be determined in all respects as if that person had died domiciled in New Zealand, and where any such person dies leaving a will made in New Zealand either before or after the passing of this Act, the validity and construction of that will as far as it affects movable property in
20 New Zealand, and the capacity of that person to make the will affecting that property, shall be determined in all respects as if that person had been domiciled in New Zealand at the date of the will and had continued to be so domiciled until
25 his or her death.

(2) This section shall apply to the following persons:

- (a) Every married woman who dies after the thirty-first day of December, nineteen hundred and forty-eight, and who would be domiciled in New Zealand at her
30 death if she could retain and acquire a domicile distinct from that of her husband:
- (b) Every minor who dies in New Zealand after the thirty-first day of December, nineteen hundred and forty-eight, and whose mother would be domiciled in New Zealand at the death of the minor or the mother, whichever first occurs, if the mother could retain and acquire a domicile distinct from that of her
35 husband.

- (3) The (*local*) situation of any movable property shall be
40 determined for the purposes of this section in the same manner as it is determined for the purposes of the Estate and Gift Duties Act 1968.

(4) Nothing in this section shall cause any property outside New Zealand to be included in the dutiable estate of any deceased person for the purposes of the Estate and Gift Duties Act 1968, if that property would not otherwise be included therein.

5

Cf. 1952, No. 56, s. 41

63. Administration not to be granted to companies other than trustee companies—(1) No grant of probate of the will of any deceased person or letters of administration of the estate of a deceased person, either with or without a will annexed, shall be made to any company unless the company is expressly authorised by an Act of Parliament to apply for and obtain the grant.

10

(2) For the purposes of this section a grant of probate or letters of administration to a syndic of a company shall be deemed to be a grant to that company; and where a power is granted to a company or to the directors of a company by will to nominate any person as executor of the will, a grant to a person so nominated shall be deemed to be a grant to the company.

15

20

(3) Nothing in this section shall—

(a) Prevent the grant of probate of the will of any deceased person to any company or to a syndic of the company in any case where the company is appointed as executor of the will and the actual document providing for the appointment was made before the first day of January, nineteen hundred and sixty-three:

25

(b) Prevent the grant of probate of the will of any deceased person to any person nominated as executor of the will by a company or the directors of a company pursuant to a power granted by any testamentary instrument, if the actual document granting the power was made before the first day of January, nineteen hundred and sixty-three:

30

35

(c) Prevent the resealing in New Zealand of probate or letters of administration granted to a company in any other country:

(d) Affect any grant of probate or letters of administration subsisting at the date of the commencement of this section.

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Cf. 1960, No. 100, s. 4

64. Devolution of loan stock without administration—

(1) Where any person has died, whether before or after the commencement of this section, and at the time of his death the person was the registered holder of Government stock of a
5 nominal value not exceeding one thousand dollars, or of local authorities stock of a nominal value not exceeding one thousand dollars, or of both, the Reserve Bank of New Zealand, as Registrar of Stock, may, in its discretion and without requiring any person to obtain administration,
10 register as holder of the stock any person who proves to its satisfaction:

- (a) That the registered holder has died and administration of his estate has not been obtained in New Zealand; and
15 (b) That he is either—
(i) Beneficially entitled to the stock under the will or on the intestacy of the deceased stockholder; or
(ii) Entitled to obtain in New Zealand administration of the estate of the deceased stockholder.

20 (2) In this section—

“Government stock” means any stock issued under Part III of the New Zealand Loans Act 1953:

“Local authorities stock” means any stock issued under Part III of the Local Authorities Loans Act 1956.

25 Cf. 1952, No. 56, s. 43A; 1964, No. 24, s. 3

65. Payment without administration—(1) In this section,—

“Bank” means a bank within the meaning of the Banking Act 1908; and includes the Reserve Bank of New Zealand established under the Reserve Bank of New Zealand Act 1964, the Post Office Savings Bank established under the Post Office Act 1959, any trustee savings bank established under the Trustee Savings Banks Act 1948, and any private savings bank within the meaning of the Private Savings Banks Act 1964:
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35

“Local authority” means any local authority within the meaning of Part XII of the Public Revenues Act 1953:

“Society” means any building society within the meaning of the Building Societies Act 1965, any industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act 1908, or any friendly society or branch thereof registered or deemed to be registered under the Friendly Societies Act 1909:
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45

“Trustees of a superannuation fund” means the trustees or administering body of any pension plan or superannuation fund; and includes the Government Superannuation Fund Board and the National Provident Fund Board: 5

(2) In the event of the death of any person to whom any sum of money not exceeding one thousand dollars is payable by the trustees of a superannuation fund, a society, a bank, an employer of the deceased person at or within six months before the date of his death, a local authority, a trustee corporation, the State Advances Corporation of New Zealand, or the Crown respectively, whether the death occurred before or after the commencement of this section, it shall be lawful for the trustees of the superannuation fund, society, bank, employer, local authority, trustee corporation, the State Advances Corporation of New Zealand, or the Crown, as the case may be, without requiring administration of the estate of that deceased person to be obtained in New Zealand, and on receiving such evidence as it considers satisfactory that the person has died and that administration of his estate has not been obtained in New Zealand, to pay the sum or any part thereof to any of the following persons: 10 15 20

- (a) The widow, widower, or children of the deceased person: 25
- (b) The persons beneficially entitled to the estate of the deceased person under the will or on the intestacy of that person: 30
- (c) Any person appearing to be entitled to obtain administration of the estate of the deceased person in New Zealand: 35
- (d) Any person related by blood or marriage to the deceased person who undertakes to maintain the children of that person who are minors or any of them: 35
- (e) Any person who has the custody and control of any of the children of the deceased person who are minors: 35

Provided that no payment shall be made to any person unless he applies for or consents to receive that payment.

(3) It shall be lawful for the trustees of a superannuation fund, a society, a bank, an employer of the deceased person at or within six months before the date of his death, a local authority, a trustee corporation, the State Advances Corporation of New Zealand, or the Crown, respectively, out of the money to which subsection (2) of this section applies, to pay the funeral expenses of a deceased person, or to refund the amount of those expenses to any person who has paid them, in any case where no person has applied for or consented to receive payment of the money under subsection (2) of this section.

(4) Where money is payable by a bank in the event of the death of any person and comprises money in a separate investment account under the National Savings Act 1940 and also other money, the provisions of subsections (2) and (3) of this section shall apply separately to the amount of money in the investment account and to the amount of other money as if each such amount was the only amount payable by the bank in the event of the death of that person.

(5) Where by virtue of a policy or policies of insurance within the meaning of the Life Insurance Act 1908, a sum of money not exceeding one thousand dollars (including profits but not including any money that may be payable to or deductible by the company liable under the policy or policies) has become payable to the administrator of a deceased person, whether before or after the commencement of this section, it shall be lawful for the company, without requiring administration of the estate of the deceased person to be obtained in New Zealand, and upon receiving such evidence as it considers satisfactory that the person has died and that administration of his estate has not been obtained in New Zealand, to make payment of the sum or any part thereof to any of the persons to whom payment may be made under paragraphs (a) to (e) of subsection (2) of this section.

(6) Any payment made in good faith pursuant to this section to a person to whom the maker of the payment has reasonable grounds to believe that payment may be made under this section shall be valid against all persons whomsoever, and the maker of the payment shall be absolutely discharged from all liability in respect of money paid by him under this section.

(7) Every person to whom money is paid pursuant to this section shall be liable to apply the money in due course of administration, and the maker of the payment may, if he thinks fit, without being liable to see to the application of the money, require any such person to give sufficient undertakings, by bond or otherwise, that the money so paid will be so applied. 5

Cf. 1952, No. 56, s. 43B; 1964, No. 24, s. 3

66. Saving—Nothing in section 65 of this Act shall prevent any person to whom the money to which that section applies or any part thereof ought to have been paid from pursuing and exercising any remedy for recovery thereof against the person or persons to whom the money has been paid. 10

Cf. 1952, No. 56, s. 43B (8); 1964, No. 24, s. 3

67. Other Acts providing for payment without administration not affected—(1) Nothing in this Act shall affect the powers of any person or body to make any payment to, or register any person to be, the owner of any property in accordance with any of the provisions of section 109 of the Shipping and Seamen Act 1952, section 86 of the Patents Act 1953, section 41 of the Designs Act 1953, section 58 of the Trade Marks Act 1953, or section 86 of the Companies Act 1955, or of any other enactment for the time being in force authorising the payment of money belonging to the estate of a deceased person without requiring administration of the estate to be obtained. 15 20 25

(2) Nothing in this Act shall affect the power of any building society, friendly society, industrial and provident society, trustee savings bank, private savings bank, or the Post Office Savings Bank, to make payment of any money or to transfer any property in accordance with a nomination made by any person pursuant to any other enactment. 30

Cf. 1952, No. 56, s. 43 (3); 1964, No. 24, ss. 2, 4 (6)

68. Bondsmen and sureties deemed to be trustees—Every person who, in the capacity of bondsman or surety for another, receives money or other property belonging to the estate of any deceased person shall be deemed to be a trustee within the meaning of the Trustee Act 1956 in respect of that money or property, and may under that Act apply for relief and to be discharged from the custody of the money or property. 35 40

Cf. 1952, No. 56, s. 44

PART II

ADMINISTRATION GRANTED OUT OF NEW ZEALAND

69. Interpretation—For the purposes of this Part of this Act,—

5 “Probate or letters of administration” includes an exemplification of any probate or letters of administration, or a duplicate thereof sealed with the seal of the Court granting the same, or a copy thereof certified as correct by or under the authority of the Court
10 granting the same, and also includes an exemplification or a copy certified by or under the authority of any Court, or a duplicate sealed under the seal of any Court, of any instrument which is filed in or issued out of that Court and which within the jurisdiction of that Court operates to make any person the administrator of any property of a deceased person as if probate or letters of administration had been granted to him by that Court:

20 The filing in or the issuing out of any Court of any instrument which operates to make any person an administrator as aforesaid shall be deemed to be equivalent to the granting of probate or letters of administration by that Court to that person.

Cf. 1952, No. 56, s. 48

25 70. Estate of person dying abroad not to vest without administration obtained in New Zealand—(1) Estate in New Zealand belonging to any person who dies abroad shall not vest in any person under any bequest or devise, or under an intestacy, or by inheritance, until administration of that estate
30 is obtained in New Zealand; or, if probate or letters of administration of the estate have been granted in any place out of New Zealand, unless the probate or letters of administration are resealed in New Zealand as hereinafter provided.

35 (2) Upon the estate in New Zealand becoming legally vested in accordance with the provisions of this section, the legal estate therein shall vest as from the time of the death of the person from whom it is obtained.

Cf. 1952, No. 56, s. 49

40 71. Resealing of probate, etc.—(1) Where any probate or letters of administration granted—

(a) By any competent Court in any Commonwealth country (other than New Zealand) or in the Republic of Ireland; or

(b) By any Court of any Commonwealth country (other than New Zealand) which at the date of the grant has jurisdiction out of the Commonwealth in pursuance of an Order in Council, whether made under any Act or otherwise; or

(c) By any competent Court of any other country, being a country to which (at the date of the production for sealing under this section) this section is, by Order in Council, declared to apply—

are produced to and a copy thereof deposited with any Registrar of the Supreme Court of New Zealand, the probate or letters of administration may be sealed with the seal of the last-mentioned Court, and shall thereupon have the like force and effect and have the same operation in New Zealand, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if the probate or letters of administration had been originally granted by the Supreme Court of New Zealand.

(2) Nothing in this section shall prevent the Court from making an independent grant of administration in New Zealand.

Cf. 1952, No. 56, s. 50

72. Seal not to be affixed till fees are paid and administration bond is entered into—The seal of the Supreme Court of New Zealand shall not be affixed to any probate or letters of administration granted in any Commonwealth country (other than New Zealand) or in the Republic of Ireland, or in any other country to which section 71 of this Act is declared as aforesaid to apply, so as to give operation thereto as if the grant had been made by the Supreme Court of New Zealand, until all such fees have been paid as would have been payable if the probate or letters of administration had been originally granted by the Supreme Court of New Zealand; and, further, no such letters of administration shall be so sealed until such bond is entered into as would have been required if the letters had been originally granted by the said Supreme Court:

Provided that the Court may if it thinks fit dispense with the bond or reduce the amount of the penalty thereunder:

Provided also that where letters of administration are at any time granted to any Public Trustee or other like public official of any Commonwealth country (other than New Zealand) or of the Republic of Ireland or of any other country to which **section 71** of this Act is declared as aforesaid to apply, it shall not be necessary, upon the resealing in New Zealand of the letters of administration, for the said Public Trustee or other official, as the case may be, to execute any such bond.

Cf. 1952, No. 56, s. 51

73. No probate, etc., granted out of New Zealand to be evidence unless resealed—Probate or letters of administration granted in any place out of New Zealand shall not be received in evidence of the title of any person to any estate in New Zealand until the probate or letters of administration are resealed in New Zealand as hereinbefore provided.

Cf. 1952, No. 56, s. 52

74. Effect of sections 70 and 73—Nothing in **sections 70 and 73** of this Act shall restrict the provisions of **sections 64 and 65** of this Act, or the provisions of any other enactment relating to the payment or devolution of any estate without administration.

PART III

DISTRIBUTION OF INTESTATE ESTATES

75. Application of this Part of this Act—This Part of this Act shall not apply in any case where the death occurred before the commencement of this Act; and the estate of any person who died intestate before the commencement of this Act shall be distributed in accordance with the enactments and law in force at the death of that person.

Cf. 1952, No. 56, s. 54

76. Abolition of escheat—There shall be no escheat to the Crown for want of heirs or successors.

Cf. 1952, No. 56, s. 55

77. Succession to real and personal estate on intestacy—
(1) Where any person dies intestate as to any real or personal estate, that estate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:

(a) If the intestate leaves a husband or wife, the surviving husband or wife shall take the personal chattels

absolutely, (but subject, in the case of any such chattels that are subject to a hire purchase agreement within the meaning of the Hire Purchase Agreements Act 1939, or to an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement, to the rights of the vendor under the agreement) and, in addition, the residue of the estate shall stand charged with the payment of a sum of twelve thousand dollars to the surviving husband or wife with interest thereon from the date of the death until paid or appropriated, at the rate from time to time prescribed by or under section 39 of this Act, and, subject to providing for that sum and the interest thereon, the residue of the estate shall be held,—

(i) If the intestate leaves issue, in trust as to one-third for the surviving husband or wife absolutely, and as to the other two-thirds on the statutory trusts for the issue of the intestate:

(ii) If the intestate leaves no issue, in trust as to two-thirds for the surviving husband or wife absolutely, and as to the other one-third if the intestate leaves both parents, in trust for the father and mother in equal shares absolutely or, if the intestate leaves only one parent, in trust for the surviving father or mother absolutely:

(iii) If the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely:

(b) If the intestate leaves issue but no husband or wife, the estate shall be held on the statutory trusts for the issue of the intestate:

(c) If the intestate leaves no husband or wife or issue but a parent or parents, the estate shall be held in trust for the parents in equal shares if they both survive the intestate but if only one of them survives the intestate for that one:

Struck Out

(d) If the intestate leaves no husband or wife or issue or parent, the estate shall be held on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate:

(e) If the intestate leaves no husband or wife or issue or parent, the estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:

5 Firstly, on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate; but if no person takes an absolutely vested interest under such trusts; then

10 Secondly, in trust for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

15 Thirdly, on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters (whether of full or of half blood) of a parent of the intestate:

(f) In default of any person taking an absolute interest under the foregoing provisions, the estate shall belong to the Crown as *bona vacantia*, and in place of any right to escheat; and the Crown may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

(3) Nothing in this section shall restrict the provisions of the 30 Matrimonial Proceedings Act 1963 or the Domestic Proceedings Act 1968.

Cf. 1952, No. 56, s. 56

78. Statutory trusts in favour of issue and other classes of relatives of intestate—(1) Where under this Act the estate of 35 an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:

(a) In trust, in equal shares if more than one, for all or any 40 the children or child of the intestate, living at the death of the intestate, who attain full age or marry under that age, and for all or any of the issue living at the death of the intestate who attain full age or marry under that age of any child of the intestate who predeceases the intestate, the said issue to take

through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent takes an absolutely vested interest: 5

Provided that if any person capable of taking under this paragraph (including this proviso) dies before taking an absolutely vested interest leaving any child or children who shall be living at the expiration of twenty-one years from the death of the intestate or who shall sooner attain full age or marry under that age, that child or those children shall take, in equal shares if more than one, the share which his, her, or their parent would have taken if he or she had not so died: 10 15

(b) The statutory power of advancement, and the statutory provisions which relate to maintenance, education, and benefit, and the accumulation of surplus income, shall apply, and when a person becomes entitled to a vested share or interest under the statutory trusts, that person shall be entitled on attaining the age of eighteen years or sooner marrying to give a valid receipt for his share or interest: 20

(c) The administrator may permit any minor (*contingently interested to have the use and enjoyment of any personal*) who has a vested or contingent interest in any personal chattels to have the use and enjoyment of the chattels in such manner and subject to such conditions (if any) as the administrator may consider reasonable, and without being liable to account for any consequential loss. 25 30

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest—

(a) The estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve, and be held under the provisions of this Act as if the intestate had died without leaving issue living at the death of the intestate: 35 40

(b) References in this Act to the intestate “leaving no issue” shall, subject to the provisions of this section, be construed as “leaving no issue who attain an absolutely vested interest”: 45

(c) References in this Act to the intestate "leaving issue" or "leaving a child or other issue" shall, subject to the provisions of this section, be construed as "leaving issue who attain an absolutely vested interest".

(3) Where under this Act the estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of the relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if those trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

Cf. 1952, No. 56, s. 57

79. Application to cases of partial intestacy—(1) Where any person dies leaving a will effectively disposing of part of his estate, the provisions of this Part of this Act shall have effect in respect of the part of his estate not so disposed of, subject to the provisions of the will and of subsection (2) of this section.

(2) Where the deceased leaves a husband or wife who acquires a beneficial interest under the will of the deceased, the references in section 77 of this Act to a sum of twelve thousand dollars payable to a surviving husband or wife, and to interest on that sum, shall be taken as references to that sum diminished by the value of the said beneficial interest at the date of death, and to interest on that sum as so diminished, and, accordingly, where the said value exceeds that sum, (section 78) section 77 of this Act shall have effect as if references to that sum and to interest thereon were omitted.

(3) References in the foregoing provisions of this section to a beneficial interest acquired under a will shall be construed—

- (a) As including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not a special power of appointment:
- (b) As not including a reference to a beneficial interest in any personal chattels.

(4) For the purposes of the foregoing provisions of this section the administrator may ascertain and fix the value of the said beneficial interest in accordance with section 28 of the Trustee Act 1956, and no action shall lie against the administrator if he distributes the estate in accordance with the value that he has honestly and reasonably so fixed.

Cf. 1952, No. 56, s. 59; 1965, No. 43, s. 5

80. Construction of documents—(1) References to any Statutes of Distribution in an instrument *inter vivos* made, or in a will coming into operation, on or after the commencement of this Act, shall be construed as references to this Part of this Act; and references in such an instrument or will to statutory next of kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part of this Act.

(2) Trusts declared in an instrument *inter vivos* made, or in a will coming into operation, before the commencement of this Act and on or after the first day of January, nineteen hundred and forty-five (being the date of the commencement of the Administration Amendment Act 1944), by reference to the Statutes of Distribution, or to the statutes relating to the distribution of intestates' estates, shall, unless the contrary thereby appears, be construed as referring to the enactments relating to the distribution of estates of intestates which were in force when the instrument was made or the will came into operation.

(3) Trusts declared in an instrument *inter vivos* made, or in a will coming into operation, before the first day of January, nineteen hundred and forty-five, by reference to the Statutes of Distribution, or to the statutes relating to the distribution of intestates' estates, shall, unless the contrary thereby appears, be construed as referring to the enactments relating to the distribution of estates of intestates which were in force immediately before the first day of January, nineteen hundred and forty-five.

Cf. 1952, No. 56, s. 60

PART IV

MISCELLANEOUS PROVISIONS

81. Right of successor on intestacy to disclaim—(1) Subject to the provisions of this section, where a successor has become
5 entitled under this Act to an interest as a beneficiary in the whole or any part of the real and personal property which passes on the intestacy of any person,—

10 (a) The successor may, by deed delivered to the intestate person's administrator, disclaim that interest if at the date of the disclaimer he has attained full age and is of sound mind:

15 (b) The Court may, by order, disclaim the interest on behalf of the successor or authorise the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor has not attained full age or is not of sound mind.

(2) No disclaimer under this section shall be valid unless—

20 (a) The disclaimer is made by the successor in his lifetime; and

25 (b) The disclaimer relates to the whole of the successor's interest as a beneficiary under this Act in the real and personal property which passes on the intestacy of the person, including property which any other person has disclaimed under this section; and

30 (c) The disclaimer is made within one year after the date of the first grant in New Zealand of administration in respect of the estate or will of the intestate person (whether that grant was made before or after the commencement of this Act) or within such extended period as may be allowed by the Court.

(3) No disclaimer under this section shall be valid if—

35 (a) The successor has entered into enjoyment of the whole or any part of the interest to which he has become entitled as aforesaid; or

40 (b) The successor has transferred, assigned, mortgaged, settled, or otherwise disposed of that interest or of any part thereof or of any property which would include that interest or any part thereof if it were not disclaimed, or has covenanted or agreed to do any such thing; or

45 (c) There is any valuable consideration for the disclaimer; or

(d) The disclaimer provides for any assignment of the disclaimed interest or in any manner provides who is to be entitled to that interest; or

- (e) The successor is bankrupt when the disclaimer is made.
- (4) The following provisions shall apply to every disclaimer under this section:
- (a) The disclaimer shall be irrevocable:
- (b) The disclaimer shall not affect the right of the successor to make any application to the Court to which section 47 of this Act applies in respect of the estate of the intestate person. 5
- (5) Where a disclaimer which complies with all the requirements of this section has been made by or on behalf of any successor and the disclaimer is not void and does not become void by reason of its being deemed under section 82 of this Act to be a transfer of the disclaimed interest— 10
- (a) The property which passes on the intestacy of the person shall be distributed, and estate duty in his estate shall be assessed, as if the successor had died immediately before the intestate person leaving only such issue (if any) as the successor would have left if he had died immediately before the intestate person: 15
- (b) The successor shall be deemed for all purposes neither to have become entitled to nor to have disposed of the disclaimed interest or any part thereof. 20
- (6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section. 25
- (7) Every disclaimer under this section shall be deemed to be made at the first point of time when everything has been done in respect of the disclaimer which is necessary to comply with the requirements of this section and of any order of the Court which relates to the disclaimer and is made under this section. 30

Cf. 1952, No. 56, s. 61; 1954, No. 51, s. 48

82. Effect of bankruptcy on disclaimer on intestacy or under a will and right of administrator to distribute—(1) Where a successor disclaims the interest as a beneficiary to which he is entitled under this Act in any real or personal property which passes on the intestacy of any person, or disclaims any interest as a beneficiary in any real or personal property to which he is entitled under the will of a deceased person, then, for the purposes of the Insolvency Act 1967 and of any other Act or rule of law relating to the protection of creditors,— 35

- (a) The successor shall be deemed to have accepted the disclaimed interest; and 40

(b) The disclaimer shall be deemed to be a transfer of the disclaimed interest by the successor to the person or persons who become entitled thereto in consequence of the disclaimer.

5 (2) Where any such successor has disclaimed any such interest in any property and there is no possibility of the disclaimer being void or voidable otherwise than by reason of its being deemed to be a transfer of the disclaimed interest, the deceased person's administrator may distribute the disclaimed
10 interest or any part of it as if there were no possibility of the disclaimer being or becoming void or voidable by reason of its being deemed to be a transfer of the disclaimed interest if, at the date of the distribution,—

(a) The successor is not bankrupt; and

15 (b) The administrator has no reason to believe that the successor is about to become bankrupt; and

(c) The administrator has no reason to believe that the disclaimer is void or voidable or is about to become void or voidable by reason of its being deemed to be a
20 transfer of the disclaimed interest.

(3) No action shall lie against any such administrator by reason of his distributing any disclaimed interest as aforesaid or by reason of his having failed to make any inquiry as to whether the successor was about to become bankrupt or as to
25 whether the disclaimer was void or voidable or about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest; but nothing in this subsection or in subsection (2) of this section shall affect any right which any person may have to follow and recover any property
30 to which the disclaimer relates.

Cf. 1952, No. 56, s. 63

83. Consequential amendment—Section 40 of the Trustee Act 1956 is hereby amended by omitting from subsection (3) the words “four percent per annum”, and substituting the
35 words “that for the time being prescribed by or under section 39 of the Administration Act 1969”.

84. Repeals and savings—(1) The enactments specified in the Third Schedule to this Act are hereby repealed.

(2) The enactments specified in the Fourth Schedule to this
40 Act shall not have effect as part of the law of New Zealand.

(3) The provisions of the Acts Interpretation Act 1924 relating to the repeal of Acts shall apply to the enactments specified in the Fourth Schedule to this Act, so far as they were in force in New Zealand immediately before the commencement of this Act, as if they were Acts of the General Assembly of New Zealand. 5

(4) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of section 3 of the Administration Amendment Act 1960 shall not affect the amendments made by that section. 10

(5) Except as expressly provided in this Act, nothing in this Act shall affect the Maori Trustee Act 1953, the Public Trust Office Act 1957, and the Trustee Companies Act 1967.

SCHEDULES

Section 18

FIRST SCHEDULE

Certificate of Administration

In the Supreme Court of New Zealand,
District
In the estate of , of
, deceased.

PURSUANT to section 18 of the Administration Act 1969, I hereby certify that, on the day of 19 , probate of the will [or letters of administration in the estate]* of the above-named deceased who died on or about the day of 19 , was [were] granted to , of

Dated at this day of 19 .
[Seal]

Registrar.

*In the case of a limited or special grant the exact nature of the grant should be shown.

Section 58

SECOND SCHEDULE

ORDER TO PUBLIC TRUSTEE OR MAORI TRUSTEE TO ADMINISTER

In the Supreme Court of New Zealand,
The day of 19 .

UPON reading the affidavits of , it is ordered that shall be administrator of all the real and personal estate of deceased [with the will of the said annexed].

THIRD SCHEDULE

Section 84 (1)

ENACTMENTS REPEALED

- 1952, No. 56—The Administration Act (1956) 1952. (1957 Reprint, Vol. 1, p. 39.)
- 1953, No. 95—The Maori Trustee Act 1953: Section 16A.
- 1954, No. 51—The Penal Institutions Act 1954: So much of the First Schedule as relates to the Administration Act 1952.
- 1957, No. 36—The Public Trust Office Act 1957: Sections 104 and 107. (1957 Reprint; Vol. 12, p. 454.)
- 1957, No. 38—The Administration Amendment Act 1957.
- 1960, No. 100—The Administration Amendment Act 1960.

Struck Out

- 1963, No. 71—The Matrimonial Proceedings Act 1963: Subsection (2) of section 89.
- 1964, No. 24—The Administration Amendment Act 1964: Sections 2 and 3.
- 1965, No. 43—The Administration Amendment Act 1965.
- 1967, No. 35—The Trustee Companies Act 1967: Paragraph (a) of section 3 and section 43.
- 1967, No. 55—The Administration Amendment Act 1967.
- 1967, No. 124—The Maori Affairs Amendment Act 1967: Subsection (1) of section 89 and subsection (3) of section 148.
- 1968, No. 24—The Trustee Amendment Act 1968: Subsection (3) of section 6 and subsection (2) of section 10.
- 1968, No. 35—The Estate and Gift Duties Act 1968: So much of the Fourth Schedule as relates to the Administration Act 1952.
- 1968, No. 60—The Matrimonial Proceedings Amendment Act 1968: Subsection (2) of section 8.
- 1968, No. 61—The Matrimonial Property Amendment Act 1968: Section 8.
- 1968, No. 62—The Domestic Proceedings Act 1968: So much of the First Schedule as relates to the Administration Act 1952.
- 1969, No. 18—The Statutes of Children Act 1969: So much of the Schedule as relates to the Administration Act 1952.

Section 84 (2), (3)

FOURTH SCHEDULE

ENACTMENTS DECLARED NOT TO HAVE EFFECT IN NEW ZEALAND

Session and Chapter	Title or Short Title	Extent of Repeal
13 Edw. 1 (<i>Stat. Westm. sec.</i>) c. 19	The ordinary chargeable to pay the debts of an intestate.	The whole chapter.
13 Edw. 1 (<i>Stat. Westm. sec.</i>) c. 23	Writ of account for executors	The whole chapter.
13 Edw. (<i>Stat. Westm. sec.</i>) c. 34	Dower forfeited by elopement with adulterer	From "and if a wife willingly leave her husband" to "in which case she shall be restored to her action".
25 Edw. 1 c. 7	Widow; her marriage estate; quarantine; estovers; dower; re-marriage	The whole chapter.
25 Edw. 1 c. 18	The King's tenant, his debtor	From "and the residue" to "reasonable parts".
Statute (<i>temp. incert.</i>)	Statute concerning tenants by the Curtesy of England.	The whole statute.
4 Edw. 3 c. 7	Executors shall have an action of trespass for a wrong done to their testator.	The whole chapter.
25 Edw. 3 st. 5 c. 5	Executors of executors shall have the same rights and duties as the first executors.	The whole chapter.
31 Edw. 3 st. 4	Probate of testaments	The whole chapter
31 Edw. 3 st. 1 c. 11	The ordinary shall commit administration upon an intestacy. The administrators shall have the same rights and charges as executors.	The whole chapter.
21 Hen. 8 c. 4	An Act concerning executors of last wills and testaments.	The whole Act.
21 Hen. 8 c. 5	An Act concerning fines and sums of money to be taken by the Ministers of Bishops and other Ordinaries of Holy Church for the probate of Testaments.	The whole Act.
32 Hen. 8 c. 37	For recovering of arrerage by executors and administrators.	Sections 1, 2, and 3.
1 Edw. 6 c. 12	An Act for the repeal of certain statutes concerning treasons, felonies, etc.	Section 16.
43 Eliz. c. 8	An Act against fraudulent administration of intestates goods.	The whole Act.
29 Chas. 2 c. 3	The Statute of Frauds	Sections 10, 11, 23, and 24.
30 Chas. 2 c. 7	An Act to enable creditors to recover their debts of the executors and administrators of executors in their own wrong.	The whole Act.
1 Jas. 2 c. 17	An Act for reviving and continuance of several Acts of Parliament therein mentioned.	The whole Act.
4 Will. & Mar. c. 24	An Act for reviving, continuing and explaining several laws therein mentioned that are expired and near expiring.	Section 12.

FOURTH SCHEDULE—*continued*ENACTMENTS DECLARED NOT TO HAVE EFFECT IN NEW
ZEALAND—*continued*

Session and Chapter	Title or Short Title	Extent of Repeal
38 Geo. 3 c. 87	The Administration of Estates Act 1798.	The whole Act.
11 Geo. 4 & 1 Will. 4 c. 40	The Executors Act 1830	The whole Act.
11 Geo. 4 & 1 Will. 4 c. 47	The Debts Recovery Act 1830	The whole Act.
3 & 4 Will. 4 c. 42	The Civil Procedure Act 1833	Sections 2, 37, and 38.
3 & 4 Will. 4 c. 74	The Fines and Recoveries Act 1833	In section 27, the words "no woman in respect of her dower, and".
3 & 4 Will. c. 104	The Administration of Estates Act 1833.	The whole Act.
2 & 3 Vict. c. 60	The Debts Recovery Act 1839	The whole Act.
20 & 21 Vict. c. 77	The Court of Probate Act 1857	The whole Act.
21 & 22 Vict. c. 95	The Court of Probate Act 1858	The whole Act.