

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

6th October, 1949.

[AS AMENDED BY THE LEGISLATIVE COUNCIL]

13th October, 1949.

Hon. Mr. Mason

LAW REFORM (TESTAMENTARY PROMISES)

ANALYSIS

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A BILL INTITLED

AN ACT to Make Better Provision for the Enforcement of Promises to Make Testamentary Provision in Return for Services Rendered. Title.

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

1. This Act may be cited as the Law Reform (Testamentary Promises) Act, 1949. Short Title.

10 2. In this Act, unless the context otherwise requires, the term "promise" shall be deemed to include any statement or representation of fact or intention. Interpretation.

Estate of
deceased person
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provision.
Cf. 1944,
No. 18, s. 3

3. (1) Where in the administration of the estate of any deceased person a claim is made against the estate founded upon the rendering of services to or the performance of work for the deceased in his lifetime, and the claimant proves an express or implied promise by the deceased to reward him for the services or work by making some testamentary provision for the claimant, the claim shall, to the extent to which the deceased has failed to make that testamentary provision or otherwise remunerate the claimant (whether or not a claim for such remuneration could have been enforced in the lifetime of the deceased), be enforceable against the personal representatives of the deceased in the same manner and to the same extent as if the promise of the deceased were a promise for payment by the deceased in his lifetime of the amount specified in the promise or, if no amount is specified or the promise relates to real property or to personal property other than money, of such amount as may be reasonable, having regard to all the circumstances of the case, including in particular the circumstances in which the promise was made and the services were rendered or the work was performed, the value of the services or work, the value of any real or personal property specified in the promise, the amount of the estate, and the nature and amounts of the claims of other persons against the estate, whether as creditors, beneficiaries, wife, husband, children, next-of-kin, or otherwise.

(2) This section shall apply--

(a) Whether the services were rendered or the work was performed before or after the making of the promise:

(b) Notwithstanding anything to the contrary in section four of the Statute of Frauds, 1677, or any other enactment.

(3) Where the promise relates to any real or personal property which forms part of the estate of the deceased on his death, the Court may in its discretion, instead of awarding to the claimant a reasonable sum as aforesaid,—

(a) Make an order vesting the property in the claimant or directing any person to transfer or assign the property to him; or

5 (b) Make an order vesting any part of the property in the claimant or directing any person to transfer or assign any part of the property to him, and awarding to the claimant such amount (if any) as in its opinion is reasonable in the circumstances.

10 (4) In awarding any amount on a claim under this section the Court may, if it thinks fit, order that the amount awarded may consist of a lump sum or a periodical or other payment.

15 (5) The incidence of any payment or payments so ordered shall, unless the Court otherwise determines, fall rateably upon the whole estate of the deceased, or, in cases where the authority of the Court does not extend or cannot directly or indirectly be made to extend to the whole estate, then to so much thereof as is situated in New Zealand.

20 (6) The Court shall have power to exonerate any part of the estate of the deceased from the incidence of any such payment or payments, after hearing such of the parties as may be affected by the exoneration as it thinks necessary, and may for that purpose direct any executor or administrator to represent, or appoint any person to represent, any such party.

25 (7) Any order under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

30 4. (1) Upon any order being made under this Act, the portion of the estate comprised in or affected by the order shall be held subject to the provisions of the order. Effect of order of Court.

35 (2) Where an order is made under this Act, all duties payable in respect of the estate of the deceased shall be computed as if the provisions of the order had been part of the will of the deceased, or, if the deceased died without leaving a will, as if he had died leaving a will containing the provisions of the order. Any duty paid in excess of the amount required to be paid under this subsection shall on application, and without further 40 appropriation than this section, be returned by the Commissioner of Stamp Duties to the person entitled to receive it.

45 5. All actions to enforce claims under this Act shall be commenced in the Supreme Court and, notwithstanding anything to the contrary in the Judicature Amendment Act, 1936, shall be tried before a Judge without a jury. Procedure. 1936, No. 22

Limitation
of actions.

6. No action to enforce a claim under this Act shall be maintainable unless the action is commenced within twelve months after the personal representative of the deceased took out representation.

New

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Provided that any such action may be commenced at any time within three months after the passing of this Act, notwithstanding that the aforesaid period of twelve months has expired before or after the passing of this Act, if at the time of the commencement of the action the estate of the deceased has not been finally distributed. For the purposes of this proviso, no real or personal property that is held upon trust for any of the beneficiaries in the estate of the deceased shall be deemed to have been distributed or to have ceased to be part of the estate of the deceased by reason of the fact that it is held by the executors or administrators after they have ceased to be executors or administrators in respect of that property and have become trustees thereof, or by reason of the fact that it is held by any other trustees.

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Repeal and
savings.
1944, No. 18

7. (1) This Act is in substitution for section three of the Law Reform Act, 1944, and that section is hereby accordingly repealed.

(2) Where before the passing of this Act any action has been commenced under the said section three and the action is pending or in progress on the passing of this Act, the action may be continued and completed as if this Act had been passed before the action was commenced. Without limiting the generality of the foregoing provisions of this subsection, it is hereby declared that if in any action so commenced as aforesaid any appeal has been brought before the passing of this Act and has not been finally determined, or the time for bringing any appeal has not expired before the passing of this Act, the action shall for the purposes of this subsection be deemed to be pending.

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