

John Donald Macfarlane Estate Administration Empowering Act 1918

Private Act 1918 No 1
Date of assent 29 November 1918

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An Act to authorize the High Court during the Life of John Donald Macfarlane, a Mental Patient found lunatic on Inquisition, now an Inmate of the Ashburn Hall Private Mental Hospital, Dunedin, Otago, to grant Administration of his Estate as if he were dead on the Date of the coming into Operation of this Act, so as to bring his Will into Immediate Operation, and to make Provision out of his Estate for his Maintenance and Comfort during the Remainder of his Natural Life, and also for the Payment of the Expenses of this Act, and also to provide that for all Purposes of such Administration and of the Distribution of his Estate all his Six Children shall be deemed to be alive on the said Date.

Preamble

WHEREAS John Donald Macfarlane, of Hawkswood, Amuri, Canterbury, in the Dominion of New Zealand, sheep-farmer, now a mental patient in the Ashburn Hall Private Mental Hospital, near the City of Dunedin, Otago, in the said Dominion, was on

the twenty-fourth day of March, eighteen hundred and ninety-six, on inquisition by the High Court of New Zealand found mentally defective person: And whereas since the twenty-eighth day of November, nineteen hundred and two, the said John Donald Macfarlane has been continuously an inmate as a mental patient of the said Ashburn Hall Mental Hospital, and there is now no prospect or reasonable hope of his recovery of mental health and power: And whereas the said John Donald Macfarlane is the owner in fee-simple of the Hawkswood Sheep-station, a property situate in the Amuri district aforesaid, and comprising twenty thousand nine hundred and twenty-two acres, or thereabouts, together with the sheep and other stock and plant now being thereon, and also of certain moneys invested in war bonds, moneys in the bank, and other assets, amounting in all to a capital unencumbered value of one hundred and seventy-three thousand five hundred and ninety-four dollars, or thereabouts: And whereas the said John Donald Macfarlane is married, and his wife, Margaret Hart Macfarlane, is now alive and resides at Hawkswood aforesaid: And whereas the said John Donald Macfarlane by his said wife has had six children, and no more—namely, four sons, John Frederic Macfarlane, aged thirty-three years; Hugh Miller Macfarlane, aged thirty-two years; Douglas Grahame Macfarlane, aged thirty years; and Walter Angus Macfarlane, aged twenty-four years; and two daughters, Florence Agnes Macfarlane, aged thirty-six years, and Ann Ruth Macfarlane, aged twenty-six years—all of whom are now living, and three of whom—namely, Hugh Miller Macfarlane, Douglas Grahame Macfarlane, and Walter Angus Macfarlane—are now absent from New Zealand on active service in His Majesty's New Zealand Expeditionary Force: And whereas the said John Donald Macfarlane while he was of sound mind—namely, on the twenty-seventh day of April, eighteen hundred and ninety-three—duly made his last will and testament, and thereby made provision for his wife and family: And whereas there is no prospect of the said John Donald Macfarlane ever again recovering any testamentary capacity: And whereas the executors named in his said will—namely, Walter Macfarlane, of Kaiwarra, Amuri aforesaid, sheep-farmer, and Edmond George Staveley, of Christchurch, company-manager—are both now dead: And whereas the longer retention of so large an estate of land in one holding is against public interest, retards closer settlement,

and militates against the most beneficial use of such land: And whereas during the incapacity of the said John Donald Macfarlane and while the title of the said land remains in his name the said land cannot conveniently be sold or be divided amongst the children of the said John Donald Macfarlane, and the same as one holding is subject to an extremely heavy burden of taxation: And whereas the setting-aside and investment of a sum of eighteen thousand dollars would produce an ample income for the maintenance and comfort of the said John Donald Macfarlane as a mental patient in Ashburn Hall or in any other mental hospital: And whereas both in the public interest and in the interest of the family of the said John Donald Macfarlane it is expedient that provision be made to authorize the High Court, during the life of the said John Donald Macfarlane, to grant administration of his estate as if he had died on the date of the coming into operation of this Act, and so to bring his will into immediate effect and operation on such date, and to provide that all of his six children shall be deemed to have been alive on such date and to have survived their father, the said John Donald Macfarlane, and to make special provision out of his estate as a first charge thereon for the maintenance and comfort of the said John Donald Macfarlane during the remainder of his natural life, and also to make provision out of such estate for the payment of all costs and expenses of and attending the promotion and passing of this Act: And whereas the objects of this Act are not attainable otherwise than by legislation:

The words "High Court" were substituted, as from 1 April 1980, for the words "Supreme Court" pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

The words "mentally defective person" was substituted, as from 1 March 1912, from the word "lunatic" pursuant to section 134 of the Mental Health Act 1911 (1911 No 6). Those words were in turn substituted, as from 1 April 1970, by the words "mentally disordered persons" pursuant to section 129(4) of the Mental Health Act 1969 (1969 No 16).

The words "one hundred and seventy-three thousand five hundred and ninety-four dollars" and "eighteen thousand dollars" were substituted, as from 10 July 1967, for the words "eighty-six thousand seven hundred and ninety-seven pounds" and "nine thousand pounds" pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

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

1 Short Title

This Act may be cited as the John Donald Macfarlane Estate Administration Empowering Act 1918.

2 Empowering High Court to grant administration of estate

- (1) At any time after the date of the coming into operation of this Act administration of the estate of the said John Donald Macfarlane may be granted by the High Court of New Zealand in the same way as if the said John Donald Macfarlane had actually died on the date of this Act coming into operation.
- (2) Such administration may at the discretion of the said High Court or of any Judge thereof be granted either to the Public Trustee or to any of the children of the said John Donald Macfarlane upon the application either of the Public Trustee or of any child of the said John Donald Macfarlane.
- (3) If the said High Court or such Judge thereof be satisfied that the will dated the twenty-seventh day of April, eighteen hundred and ninety-three, was the last will made by the said John Donald Macfarlane while he was of testamentary capacity, such administration may be granted as letters of administration with the said will annexed upon the usual terms of such a grant.
- (4) For the purposes of such application and the granting of such administration, and also for all purposes of the administration and distribution of his estate, the said John Donald Macfarlane shall be deemed to have died on the date of this Act coming into operation, and to have been theretofore and then domiciled at Hawkswood aforesaid, within the Judicial District of Canterbury, and this Act shall be accepted as full and complete evidence of such facts, and the grant of administration shall be expressed to be made under and by virtue of this Act, and shall be subject to all the provisions hereof.

- (5) For all purposes of such administration and of the distribution thereunder of the estate of the said John Donald Macfarlane, and of the construction and interpretation of his will, all the six children of the said John Donald Macfarlane shall be deemed to be living at the date of this Act coming into operation, and to have survived their father, the said John Donald Macfarlane.
- (6) If the said John Donald Macfarlane be in fact alive at the date of the passing hereof, and at the date of the granting of such administration as aforesaid, all the estate of the said John Donald Macfarlane shall stand charged as a first and paramount charge with the raising and payment as hereinafter directed of the sum of eighteen thousand dollars, which sum shall with all convenient speed be raised by the administrator by sale or mortgage of a sufficient part or parts of the said estate, or by the setting-aside and allocating for such purpose a sufficient part of any invested moneys belonging thereto. When raised such sum shall be paid over to or the investment representing the same shall be transferred into or be taken in the name of the Public Trustee, who shall give the administrator a formal receipt or acknowledgment in writing evidencing such payment or transfer of such sum to the Public Trustee, and such receipt or acknowledgment shall effectually release and discharge the estate of the said John Donald Macfarlane from the charge hereinbefore imposed upon it, so that a good title may be made therefor and for every part thereof free from such charge. The Public Trustee shall hold the same sum, after the same shall have been so paid or transferred to him as hereinbefore directed, during the remainder of the natural life of the said John Donald Macfarlane in trust, to invest and hold the same, and to pay all or such part as he shall consider sufficient of the annual income and profits thence arising for the maintenance and comfort of the said John Donald Macfarlane, and to accumulate and invest all income not so expended, and add the same to the capital, with full power at any time thereafter to resort to and pay and expend as current income all or any part of any previously accumulated income. Upon the actual death of the said John Donald Macfarlane the Public Trustee shall pay the said capital sum, with all accumulations of income then

added thereto and unexpended, to the administrator of the estate of the said John Donald Macfarlane for distribution in accordance with this Act under the administration granted to him, subject, nevertheless, to the prior payment thereof by such administrator of all duties and charges properly payable thereof.

- (7) The Public Trustee shall have sole discretion as to the acceptance of allocated investments instead of receiving the said sum in cash, and also as to the sufficiency of any such investment, and also as to the investments in which he shall invest the sum paid to him or any sum which may from time to time come to his hands as part of such sum or as arising therefrom.
- (8) Upon the grant of such administration the estate of the said John Donald Macfarlane shall become liable to the assessment and payment of all death and other duty which would have been payable thereon and thereout if the said John Donald Macfarlane had in fact died on the date of this Act coming into operation, and the administrator shall be bound to render all accounts and statements which he would have been obliged to render if the said John Donald Macfarlane had so died on the date aforesaid; and the rendering of such accounts and statements, and the assessment and payment of such duty out of the said estate, shall be enforceable accordingly as if the said John Donald Macfarlane had so died on such date:

Provided always that the payment of duty upon the sum hereby directed to be set apart and invested during the lifetime of the said John Donald Macfarlane, or upon or in respect of any moneys payable in respect of any policies of insurance on his life and payable at his death, or upon or in respect of any other moneys payable at his death, shall not be enforced or enforceable until the actual death of the said John Donald Macfarlane, upon the happening of which such duty shall at once become payable in respect of the said sum and of all accretions thereto then in the hands of the Public Trustee, and also upon or in respect of all moneys payable at his death in respect of any insurance upon his life or otherwise howsoever upon or in respect of which moneys any duty shall be or then become payable, and shall be paid thereof by the

administrator before such sum or moneys shall be distributed as in this Act is directed.

- (9) Except for the purpose of the granting of administration as hereinbefore authorized of the estate of the said John Donald Macfarlane, and of the administration and distribution of his estate subject to the provisions of this Act, nothing herein contained shall require or authorize the death of the said John Donald Macfarlane to be assumed or deemed to be proved or established for any other purpose whatsoever, and in particular nothing herein contained shall affect or be deemed to have affected any policy or contract of insurance upon or concerning the life of the said John Donald Macfarlane, or any other contract or document other than his own will, which contains any provisions contingent or dependent upon his life or death.

The words “High Court” in subsections (1), (2), and (3) were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

The words “eighteen thousand dollars” were substituted, as from 10 July 1967, for the words “nine thousand pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

3 General empowering

The High Court and any Judge or Judges thereof to whom application shall be made under and pursuant to the provisions of this Act are hereby fully authorized and empowered to grant such administration of the estate of the said John Donald Macfarlane as aforesaid, and to do whatsoever may be necessary to give full and complete effect to this Act.

The words “High Court” were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

4 Payment of costs and expenses out of estate

All costs, charges, and expenses of and incidental to the preparing, settling, obtaining, and passing of this Act, and of obtaining any grant of administration of the estate of the said John Donald Macfarlane under this Act, shall, after such costs, charges, and expenses shall have been taxed and allowed as between solicitor and client by the Registrar, at Christchurch,

of the High Court, be paid out of the estate of the said John Donald Macfarlane by the administrator of such estate.

The words “High Court” were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).