

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,
7th July, 1885.

Hon. Mr. Stout.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE COUNCIL, 4TH AUGUST, 1885.]

ADMINISTRATION ACT 1879 AMENDMENT.

ANALYSIS.

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A BILL INTITULED

AN ACT to regulate the Distribution of the Separate Property of Married Women dying Intestate as to such Property, and to amend the Law as to Administration of Estates. 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. The Short Title of this Act is "The Administration Act 1879 Amendment Act, 1885." Short Title.

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10 ~~It shall come into operation on such day as the Governor shall appoint after Her Majesty's assent thereto has been notified.~~

New clauses.

2. "Property" and "separate property" include both real and personal estate and choses in action; Interpretation.

"Children" includes their legal representatives.

15 3. The law now in force in this colony providing for the distribution of the estates of persons dying intestate is modified as follows, namely,— Distribution of estates of persons dying intestate.

20 (a.) The property of a man dying intestate, leaving a wife but no children him surviving, shall at his death be allotted to his wife absolutely.

(b.) The separate property of a woman dying intestate, leaving a husband but no children her surviving, shall at her death be allotted to her husband absolutely.

25 (c.) The separate property of a woman dying intestate, leaving a husband and children her surviving, shall be allotted in a similar manner as the property of her husband would be allotted had he died leaving a wife and children him surviving.

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2. "Separate property" means and includes all real and personal property of every kind which shall belong to a married woman at the time of her marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

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3. Notwithstanding anything to the contrary contained in section twenty-five of a statute of the Parliament of England passed in the twenty-ninth year of the reign of King Charles the Second, chapter three, intituled "An Act for Prevention of Frauds and Perjuries," the Acts and the enactments severally enumerated in the Schedule hereto shall be construed to extend to the separate property of every married woman who shall die after the coming into operation of this Act without having made any disposition of such property by will or otherwise.

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4. The separate property of every married woman dying as aforesaid intestate as to such property, leaving her husband surviving, and children or their legal representatives, or no children, shall be distributed in accordance with the distribution of the real and personal estate of the husband had he died intestate leaving a widow, and children or their legal representatives, or no children; the intention of this enactment being—

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(1.) That a widower shall stand in the same position with respect to the distribution of the separate property of his deceased wife as she would have stood in with respect to the distribution of her husband's real and personal property had he died intestate leaving her surviving; and

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(2.) That, in the case of a married woman dying intestate, her children shall stand in the same position with respect to the distribution of her separate property as they would have stood in respect to the distribution of the real and personal property of their father had he died intestate.

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5. 4. All public officers and other persons who are now by law authorized to make payment of any moneys belonging to the estate of a deceased person not exceeding fifty pounds in amount, without requiring probate or letters of administration, or in the case of the Public Trustee without taking out an order for administration, may, from and after the passing of this Act, make payments of any such moneys not exceeding one hundred pounds in amount.

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All enactments authorizing any such officers or persons to the effect herein first mentioned shall be read as if the words "one hundred pounds" had been originally enacted therein in lieu of the words "fifty pounds."

6. 5. Every male infant not under the age of nineteen years, and every female infant not under the age of eighteen years, after his or her marriage, shall be competent to make a valid will disposing of all or any part of his or her real and personal property

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Payments of £100 may be made without probate or administration.

Infants under twenty-one years of age may make wills if married.

7. 6. Every person who, in the capacity of bondsman or surety for another, receives moneys belonging to any estate of a deceased person, shall be deemed to be a trustee within the meaning of "The Trustee Act, 1883," and may apply for relief under the said Act, and to be discharged from the custody of such moneys.

Bondsmen and sureties deemed to be trustees within Trustee Act, 1883.

8. 7. In case any property specifically devised (except property specifically devised for payment of debts) is sold or mortgaged or leased for the purpose of providing funds for the payment of the testator's debts, the person or persons to whom the same was so devised shall be entitled to rank against the residue of the estate of such testator for the value or diminished value thereof, and the Court may order all persons entitled under the will of the testator to contribute *pro tanto rata* towards payment of the value or diminished value of such specifically-devised property so directed to be sold, mortgaged, or leased, and may fix the amount of such contribution, and such order may be registered as a charge or incumbrance against the residue of the estate of such testator, and may be enforced in such manner as the Court shall direct.

Provision when property, specifically devised, sold, mortgaged, or leased to provide funds for payment of testator's debts.

New proviso.

Provided that where there are more specific devises than one of any property under a will, the several properties so specifically devised shall stand in equal degree and be equally liable for payment of debts, and no funds shall be provided for the payment of debts out of any such properties except the other such properties provide the same amount.

9. 8. Where a deed or other instrument is made or executed in professed exercise of the power to sell, lease, or mortgage conferred by the said Act or this Act, the title of the purchaser, lessee, or mortgagee shall not be impeachable except on the ground of fraud, or be affected on the ground that no case had arisen to authorize the sale, lease, or mortgage, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power; and no purchaser, lessee, or mortgagee shall be concerned to see to the application of the money paid by him, or be responsible for the misapplication thereof.

Where deed executed under power to sell, lease, or mortgage conferred by principal Act or this Act, title of purchaser, lessee, or mortgagee not impeachable.

10. 9. Whenever an executor or administrator shall die, or shall be absent from the colony for six months without leaving a lawful attorney, or shall be desirous of being discharged from the office of executor or administrator, or shall become incapable of acting as such, or shall be guilty of such misconduct in his office as renders it expedient he should be removed, the Court or a Judge thereof may, by order on a summary application, discharge or remove such executor or administrator, and may, by order, appoint any person or persons to be executor or executors, or administrator or administrators, in the place of the executor or administrator discharged or removed, on such terms and conditions in all respects as the Court or a Judge may think fit. The executor or administrator so removed or discharged shall, from the date of such order, cease to be liable for acts and things done after such date. Upon every such appointment all the property and rights vested in

Discharge or removal of executors and administrators.

the executor or administrator as such, discharged or removed as aforesaid, shall become and be vested in the person or persons appointed by the said order, and such person or persons shall have the same powers, authorities, and discretion, and may in all respects act, as if he or they had been originally appointed executor or executors, or administrator or administrators. 5

Provisions of sections 84 to 88 of "Trustee Act, 1883," extended.

~~11.~~ 10. The provisions of sections eighty-four to eighty-eight, both inclusive, of "The Trustee Act, 1883," shall apply and extend to an executor and administrator respectively.

As to payment of debts by executors and administrators.

~~12.~~ 11. An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient, and may allow time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt or claim relating to the estate of the deceased without being responsible for any loss occasioned by any act or thing done in good faith. 10 15

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SCHEDULE.

THE STATUTES OF DISTRIBUTIONS.

22 and 23 Cha. II., c. 10.—An Act for the better Settling of Intestate Estates.

1 Ja. II., c. 17.—An Act for Reviving and Continuance of several Acts of Parliament therein mentioned. Sections 5, 6, and 7 thereof.

Acts of New Zealand.

1873, No. 27.—The Public Trust Office Act Amendment Act, 1873.

1876, No. 43.—The Public Trust Office Act, 1876.

1879, No. 49.—The Administration Act, 1879.