

ADMINISTRATION AMENDMENT BILL.

EXPLANATORY MEMORANDUM.

Clause 2: Paragraph (b) of section 11 of the Administration Act, 1908 (Reprint of Statutes, Vol. III, p. 132), provides that the real estate of any person who dies intestate in respect thereof shall be held upon trust for the same persons and in the same shares as if it were personal estate. At first sight the purpose of the provision would appear to be to remove all distinctions between real estate and personal estate in the distribution of the property of any person who dies without disposing of that property by will. The Courts have held, however, that the legal effect of the paragraph is such that if the deceased has left a will disposing of his personal estate but not referring to his real estate, the real estate must be distributed in accordance with the provisions of the will as to the disposition of the personal estate. This interpretation results in anomalies, and it is accordingly proposed by clause 2 of the Bill to amend paragraph (b) so as to provide that, in the case of persons dying after the Bill is passed, real estate not disposed of by will shall be distributed as if it were personal estate *not disposed of by will*.

Clauses 3 to 6: These clauses extend the operation of Part II of the principal Act (Reprint of Statutes, Vol. III, p. 142), which provides for probates and letters of administration granted in any part of His Majesty's dominions out of New Zealand being resealed by the Supreme Court of New Zealand and thereupon having the same effect as if originally granted in New Zealand. Clause 3 in effect authorizes the resealing in New Zealand of probates and letters of administration granted in British protectorates or in mandated territories, and also of instruments having the same effect as probates or letters of administration, such as confirmations in Scotland, and elections to administer filed by a Public Trustee. Clause 4 (which is in the same terms as section 3 and the relevant provisions of section 6 of the Colonial Probates Act, 1892 (Imperial)), applies the provisions of Part II to probates and letters of administration granted by British Courts in foreign countries. Clause 5 re-enacts in a wider form the proviso to section 44 of the principal Act. The original proviso was limited to the Public Trustee of England. Clause 6 enables rules of Court to be made prescribing the procedure on resealing, and imposing any conditions that can be imposed in the case of applications to the Supreme Court of New Zealand for original grants of probate or letters of administration.

Hon. Mr. Cobbe.

ADMINISTRATION AMENDMENT.

ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p><i>Distribution of Real Estate of Intestates.</i></p> <p>2. Section 11 of principal Act amended. Saving.</p>	<p><i>Resealing Administrations granted out of New Zealand.</i></p> <p>3. Extension of Part II of principal Act. Consequential repeals.</p> <p>4. Application of Part II of principal Act to British Courts in foreign countries.</p> <p>5. Section 44 of principal Act (as to exemptions from administration bond) amended. Consequential repeal.</p> <p>6. Rules of Court.</p>
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A BILL INTITULED

AN ACT to amend the Administration Act, 1908. Title.

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 Administration Amendment Act, 1935, and shall be read together with and deemed part of the Administration Act, 1908 (hereinafter referred to as the principal Act). Short Title. See Reprint of Statutes, Vol. III, p. 128

Distribution of Real Estate of Intestates.

2. (1) Section eleven of the principal Act is hereby amended by inserting, after the words "personal estate" wherever they occur in paragraph (b), the words "in respect of which the deceased had died intestate". Section 11 of principal Act amended.

(2) Nothing in this section shall be construed to affect the distribution of the estate of any person who died before the passing of this Act. Saving.

Resealing Administrations granted out of New Zealand.

Extension of
Part II of
principal Act.
Cf. 17 & 18
Geo. V, c. 43,
s. 1 (Imp.)

3. (1) For the purposes of this Act and of Part II of the principal Act—

“ His Majesty’s dominions out of New Zealand ” shall be deemed to include any territory which is under His Majesty’s protection or in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty: 5

Cf. 55 & 56
Vict., c. 6,
ss. 2 (4),
6 (Imp.);
1921, No. 48,
s. 67, see
Reprint of
Statutes, Vol.
VIII, p. 1015

“ Probate or letters of administration ” shall be deemed to include 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 granting the same; and shall also be deemed to include any instrument which is filed in or issued out of any 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: 10 15 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. 25

Consequential
repeals.
See Reprint
of Statutes,
Vol. III,
p. 144,
Vol. VIII,
p. 1015

(2) This section is in substitution for section forty-six of the principal Act and section sixty-seven of the Public Trust Office Amendment Act, 1921–22, and those sections are hereby accordingly repealed. 30

Application of
Part II of
principal Act
to British
Courts in
foreign
countries.
Cf. 55 & 56
Vict., c. 6,
ss. 3, 6 (Imp.)

4. Section forty-three of the principal Act is hereby extended to authorize the resealing in New Zealand of any probate or letters of administration granted by any British Court having jurisdiction out of His Majesty’s dominions in pursuance of an Order in Council, whether made under any Act or otherwise, in like manner as it authorizes the resealing of a probate or letters of administration granted in any part of His Majesty’s dominions out of New Zealand. 35 40

5. (1) Section forty-four of the principal Act, as amended by section two of the Administration Amendment Act, 1911, is hereby further amended by repealing the proviso, and substituting the following proviso:—
- 5 “ Provided that where letters of administration are at any time granted to any Public Trustee or other like public official of any part of His Majesty’s dominions out of New Zealand it shall not be necessary, upon the resealing in New Zealand of those letters of administration, for the said Public Trustee or other official, as the case may be, to execute any such bond.”
- 10 (2) The said section two of the Administration Amendment Act, 1911, is hereby repealed.
6. The power to make rules of Court under section three of the Judicature Amendment Act, 1930, shall include power to make rules for the purpose of regulating the practice and procedure in relation to the resealing of probates or letters of administration under Part II of the principal Act, and in particular
- 20 for the purpose of imposing upon persons applying thereunder for the resealing of probates or letters of administration any requirements that may be imposed upon persons applying to the Supreme Court of New Zealand for original grants of probate or letters of
- 25 administration.

Section 44 of principal Act (as to exemptions from administration bond) amended.

Consequential repeal.

Rules of Court. See Reprint of Statutes, Vol. II, p. 97