

# ADMINISTRATION BILL

## EXPLANATORY NOTE

THIS Bill is a consolidation of the Administration Act 1908 and its amendments now in force. Besides changes in formal phrasing, made to accord with current drafting practice, alterations to bring the Act into conformity with present-day conditions appear in clauses 5, 6, 13, 19, 21, 25, 40, 45, 48, 49, and 76. Details of these alterations are as follows:—

*Clause 5.* The Administration Amendment Act 1911, section 4, requires that notice to the Public Trustee must be sent by telegram. The Bill places no restriction on the manner in which the notice may be given but provides that it shall be sufficient if sent by telegram.

*Clause 6.* In subclause (1) the words “ which bond shall be in such form as may be prescribed by rules ” are used instead of the words of section 21 of the Administration Act 1908, “ which bond shall be in such form as may be prescribed by rules, and in the meantime shall be in the form heretofore in use ”. In point of fact a form was prescribed by the Code of Civil Procedure scheduled to the Supreme Court Act 1882, and a form has ever since been in force. At the present time, it is Form No. 42 in the First Schedule to the Code of Civil Procedure scheduled to the Judicature Act 1908.

*Clause 13.* Section 11 of the Administration Act 1908, as amended by section 12 of the Administration Amendment Act 1944, recapitulates in detail the devolution of real estate upon intestacy, according to whether the death occurred—

after the coming into force of the Administration Amendment Act 1944;

before the coming into force of the Administration Act 1879 and after the coming into force of the Real Estate Descent Act 1874 (the case of a male person leaving a wife or child or children or any lineal descendant, and the case of any other person, being dealt with in separate paragraphs); or

before the coming into force of the Real Estate Descent Act 1874.

Paragraph (c) of *clause 13* substitutes a reference in general terms to the law that would have applied if the Bill had not been passed.

*Clause 19.* The words of section 12 of the Administration Act 1908, “ such powers (similar to those of Commissioners in England acting under a decree in equity for partitions) as it thinks fit ” are shortened to “ such powers as it thinks fit ”. The employment of Commissioners in England appears to be obsolete, and the exact range of their powers nowadays is difficult to ascertain.

*Clause 21.* The words of section 15 of the Administration Act 1908, “ every person dying on or after the 1st day of September 1880 ” are changed to “ every person who has died, whether before or after the commencement of this Act ”. The case of a person who died before 1st September 1880 no longer needs to be provided for.

*Clause 25.* In subclause (3), the words “ a notice calling upon him, within a period of three months from the date of service of the order, to take legal proceedings to enforce the claim ”, represent the passage in section 3 (1) of the Administration Amendment Act 1911 which reads: “ a notice calling upon him to take legal proceedings within a period of three months to enforce the claim ”. A notice following the words of the Act of 1911 does not make it clear to the person served from what time the period of three months begins to run.

*Clause 40.* Recent constitutional changes, and in particular the Republic of Ireland Act 1950, necessitate a fresh form of words to replace the expressions " British subject " and " Her Majesty's dominions ".

*New*

New sub-clause 40 (1A) provides that a will of personal property made by a British subject in New Zealand is valid if made in accordance with the law of New Zealand. The general rule of law is that a will of movable property depends for its validity on the law of the domicile of the testator. The new provision follows section 2 of the Wills Act 1861 (U.K.).

*Clause 45.* Subclause (2), requiring regulations to be laid before Parliament, is introduced to accord with current legislative practice.

*New*

New clauses 45A and 45B transfer to the Administration Bill the provisions relating to administration suits now contained in sections 89 and 96 of the Judicature Act 1908.

*Clauses 48 and 49.* Adjustment is made corresponding to that described in the note above relating to *clause 40*.

*Clause 76.* In section 67 of the Administration Act 1908, particular topics on which rules may be made come first, and the general clause at the end is controlled in its interpretation by what precedes. In the Bill the general power to make rules comes first, and its words are not so controlled by the list of particular topics that follows.

The disposition in the Bill of existing provisions to be repealed and replaced, and the reasons for omission of existing provisions to be repealed without replacement, are shown in the subjoined Comparative Table.

The sources of the clauses of the Bill are shown in the marginal notes.

#### COMPARATIVE TABLE

#### DISPOSITION IN BILL, OR REASON FOR OMISSION, OF ENACTMENTS BY THE BILL 1908, No. 3—THE ADMINISTRATION ACT 1908

Section of Act.	Clause of Bill or Reason for Omission.
1 (1)	Short Title.
1 (2)	Spent
1 (3)	1 (2)
1 (4)	2 (2), Provisoes treated as spent
1 (5)	Treated as spent
2	2
3	4
4	12
5	14
6	15
7	16
8	17
9	33
10	18
11	13
12	19
13	20
14	8
15	21
16	22
17	Repealed by 1924, No. 33, s. 2 (5)
18	26
19	27
20	31
21	6 (1)
22	6 (2), (4), (5)
23	6 (3), 28

1908, No. 3—THE ADMINISTRATION ACT 1908—*continued*

Section of Act.	Clause of Bill or Reason for Omission.
24	7
25	29
26	30
27	38
28	39
29	9
30	10
31	40
32	Treated as spent
33	43
34	Repealed by 1909, No. 10, s. 84, 2nd Sched.
35	34
36	44
37	11
38	35
39	36
40	37
41	45
42	47
43	48
44	49
45	50
46	Repealed by 1935, No. 19, s. 2
47 to 53	Repealed by 1944, No. 19, s. 12 (1)
54	62
55	63
56	64
57	65
58	66
59	67
60	68
61	69
62	70
63	71
64	73
65	74
66	75
67	76

## 1908, No. 200—THE TRUSTEE ACT 1908

Section of Act.	Clause of Bill.
74	25 (3), (4)

## 1911, No. 8—THE ADMINISTRATION AMENDMENT ACT 1911

Section of Act.	Clause of Bill or Reason for Omission.
1	Short Title
2	Repealed by 1935, No. 19, s. 4 (2)
3	25 (1), (2)
4	5

## 1924, No. 33—THE TRUSTEE AMENDMENT ACT 1924

Section of Act.	Clause of Bill or Reason for Omission.
2 (1)	24
2 (5)	Repeal

## 1935, No. 19—THE ADMINISTRATION AMENDMENT ACT 1935

Section of Act.	Clause of Bill or Reason for Omission.
1 .. .. .	Short Title
2 .. .. .	46
3 .. .. .	48
4 .. .. .	49
5 .. .. .	51

## 1937, No. 38—THE STATUTES AMENDMENT ACT 1937

Section of Act.	Clause of Bill.
2 .. .. .	72

## 1939, No. 39—THE STATUTES AMENDMENT ACT 1939

Section of Act.	Clause of Bill.
2 .. .. .	32

## 1941, No. 26—THE STATUTES AMENDMENT ACT 1941

Section of Act.	Clause of Bill.
2 .. .. .	6 (4)

## 1944, No. 19—THE ADMINISTRATION AMENDMENT ACT 1944

Section of Act.	Clause of Bill or Reason for Omission.
1 (1), (2) .. .. .	Short Title and commencement
1 (3) .. .. .	13, 23, 52
2 .. .. .	2
3 .. .. .	Superseded by 1950, No. 54, s. 5 (2)
4 .. .. .	23
5 to 11 .. .. .	53 to 59
12 .. .. .	13, 52

## 1945, No. 40—THE STATUTES AMENDMENT ACT 1945

Section of Act.	Clause of Bill.
3 (1) .. .. .	Introductory
3 (2) .. .. .	2 (1)
3 (3) to (8) .. .. .	42

## 1946, No. 40—THE STATUTES AMENDMENT ACT 1946

Section of Act.	Clause of Bill.
2 .. .. .	55

## 1948, No. 77—THE STATUTES AMENDMENT ACT 1948

Section of Act.	Clause of Bill.
2 .. .. .	41

## 1950, No. 54—THE CROWN PROCEEDINGS ACT 1950

Section of Act.	Clause of Bill.
5 (2) .. .. .	3

## 1951, No. 40—THE ADMINISTRATION AMENDMENT ACT 1951

Section of Act.	Clause of Bill or Reason for Omission.
1 .. .. .	Short Title
2 .. .. .	60
3 .. .. .	61

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 25 September 1952

Words struck out by Statutes Revision Committee are shown in italics within bold brackets; words inserted are shown in black or in roman with rule down side.

Hon. Mr. Webb

## ADMINISTRATION

### ANALYSIS

- |  |  |  |
|--|--|--|
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| 2. Interpretation.   | 17. Where deed executed under power, title of purchaser, &c., not impeachable.   |  |
| 3. Act to bind Crown.  | 18. Administrator to represent real estate.  |  |
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34. Question of fact may be tried by a jury.
35. Practice of Court; its administration jurisdiction.
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43. Dealing with estate of deceased person without administration.
44. Bondsmen and sureties deemed to be trustees.
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63. Accounts to be filed in Court.
64. Court may order estate to be administered.
65. Creditor may petition Court.
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68. Court may order estate to be administered by official Assignee or Public Trustee.
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71. Court to have jurisdiction of Court in bankruptcy.
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## GENERAL

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## A BILL INTITULED

AN ACT to consolidate and amend certain enactments relating to the administration of estates of deceased persons. 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. (1) This Act may be cited as the Administration Act 1952, and shall come into force on the *first* day of *January*, nineteen hundred and *fifty-three*. Short Title, commencement, and arrangement.

(2) This Act is divided into Parts, as follows:— 1908, No. 3,

PART I—Administration by Administrator. s. 1 (3)

(Sections 4 to [45] 45B.)

15 PART II—Administration granted out of New Zealand. (Sections 46 to 51.)

PART III—Distribution of Intestate Estates. (Sections 52 to 61.)

PART IV—Administration by the Court. (Sections 62 to 76.)

20 PART V—General. (Section 77).

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

25 “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 the will annexed, for general, special, or limited purposes, and in the case of the Public Trustee includes an order to administer **and an election to administer:** 1908, No. 3, ss. 1 (4), 2; 1925, No. 19, s. 3; 1944, No. 19, s. 2; 1945, No. 40, s. 3 (2)

30 “Administrator” means any person to whom administration is granted;

*New*

35 and includes the Public Trustee in any case where he is deemed to be an executor or administrator by reason of having filed an election to administer:

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

45 “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:

1939, No. 12

- “ Court ” means the Supreme Court, and includes a Judge of that Court:
- “ Estate ” means real and personal property of every kind, including choses in action:
- “ Intestate ” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate: 5
- “ Legitimated person ” means a person deemed to be legitimated under the Legitimation Act 1939: 10
- “ Personal chattels ” means carriages, horses, stable furniture and effects, motor cars and accessories, garden 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; but does not include any chattels used exclusively or principally at the death of the intestate for business purposes nor money or securities for money: 15 20
- “ 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 the same are freehold or chattel interests; and any possibility, right, or title of entry or action in or concerning them or any of them: 25 30
- “ 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, and shares: 35
- “ Trust company ” means a company which is by Act of Parliament authorized to apply for and obtain probate of the will of a deceased person:
- “ Will ” includes codicil: 40
- References to a child or issue living at the death of any person include a child or issue *en ventre sa mere* at the death.



(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 administration of the estate of any deceased person being a Maori.

5 **3.** This Act shall bind the Crown.

Act to  
bind Crown.  
1950, No. 54,  
s. 5 (2)

## PART I

### ADMINISTRATION BY ADMINISTRATOR

#### *Grant of Administration*

10 **4.** The Court shall have jurisdiction to grant administration of the estate of any deceased person leaving estate in New Zealand.

Jurisdiction  
of Supreme  
Court.  
1908, No. 3,  
s. 3

15 **5.** (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, it shall be the duty of the Registrar to give to the Public Trustee at Wellington a notice stating—

Notice to be  
sent to Public  
Trustee of  
applications  
for  
administration.  
1911, No. 8, s. 4

(a) The date of the filing and of the hearing:

(b) The full name of the deceased:

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

(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  
25 telegram.

(3) The Public Trustee shall be entitled to appear and be heard on the application.

30 **6.** (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 of by [a Judge of] the Court, conditioned for  
35 of the deceased, which bond shall be in such form as may be prescribed by rules:

Administration  
bond.  
1908, No. 3,  
ss. 21-23;  
1941, No. 26,  
s. 2

40 Provided that it shall not be necessary for the Public Trustee, or any trust company, or any person obtaining administration to the use or for the benefit of Her Majesty, to execute any such bond.

(2) Every such 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 five thousand pounds, and shall be in a penalty of five thousand pounds 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 may relate to both real and personal estate.

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

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

Proceedings if conditions of bond broken. 1908, No. 3, s. 24

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

Evidence of wills. Ibid., s. 14

8. The probate of any will or letters of administration 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 the probate or letters of administration shall in all cases, in absence of proof to the contrary, be sufficient evidence of the death and the date of the death of the testator or intestate.

Proceedings where executor neglects to prove will. Ibid., s. 29

#### *Executor Renouncing Probate*

9. (1) In any case where the executor named in a will neglects or refuses to prove the will, or renounces probate thereof, within three months from the death of the testator, the Court may, upon the application of any person interested in the estate or of the Public Trustee or of any creditor of the testator, grant an order *nisi*

calling upon the executor to show cause why probate of the will should not be granted to the executor, or, in the alternative, why administration, with the will annexed, should not be granted to the applicant.

5 (2) Upon affidavit of service of the order, if the executor does not appear or upon cause being shown, the Court may make such order thereon for the administration of the estate, and as to costs, as appears just.

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

15 (4) On the application of any executor who was out of New Zealand when the grant to the Public Trustee was made, and who has not refused or renounced administration, the Court may grant probate to that executor in any manner and subject to any limitations  
20 or conditions that the Court thinks proper.

(5) No such application shall be made until fourteen days after notice in writing of the intention to apply has been left at the office of the Public Trustee at Wellington.

25 **10.** Immediately on the grant of such probate as aforesaid all the powers, rights, and duties of the Public Trustee (except the rights reserved hereby) in relation to the testator's estate, and all liability of the Public Trustee under any contract or agreement entered into by him,  
30 or otherwise affecting or relating to the estate or any part thereof, shall cease; and, subject to and on the allowance and payment of all moneys due for commission, necessary outlay, disbursements, costs, charges, and expenses affecting the estate, including the costs of and  
35 incidental to the application for probate, and consequent thereon, and subject also to the provisions of this section and section *nine* of this Act, such portion of the estate as is then unadministered by the Public Trustee shall vest in the executor obtaining probate.

When powers,  
&c., of Public  
Trustee to  
cease.  
1908, No. 3,  
s. 30

*Replacement of Administrator*

Discharge or  
removal of  
administrator.  
1908, No. 3,  
s. 37

**11. (1)** Where an administrator is absent from New Zealand for six months without leaving a lawful attorney, or desires to be discharged from the office of administrator, or becomes incapable of acting as administrator, or is guilty of such misconduct in his office as renders it expedient that he should be removed, the Court may [on summary application] discharge or remove that administrator, and may appoint any person to be administrator in his place, on such terms and conditions in all respects as the Court thinks fit. 5 10

(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.

(3) Upon every such appointment all the estate and rights of the administrator discharged or removed as aforesaid which are vested in him as administrator shall become and be vested in the person appointed by the Court; and that person shall have the same powers, authorities, and discretion, and may in all respects act, as if he had been originally appointed administrator. 15 20

(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. 25

*Vesting of Estate in Administrators*

Estate to  
vest in  
administrators.  
Ibid., s. 4

**12. (1)** Immediately upon the granting of administration of the estate of any deceased person all the real estate then unadministered of that person, whether held by him beneficially or in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that person. 30

(2) The title of every administrator to the whole 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. 35

(3) If there are more administrators than one, the estate shall vest in them as joint tenants. 40

*Special Provisions Relating to Real Estate*

**13.** Subject to the provisions of this Act, the administrator shall hold—

How real estate to be held by administrator.

5 (a) The real 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 devises or affects that real estate:

1908, No. 3, s. 11;  
1944, No. 19, ss. 1 (3),  
12 (1)

10 (b) The real estate of any person who dies after the commencement of this Act intestate as to that real estate—according to the provisions of Part III of this Act:

15 (c) The real estate of any person who has died before the commencement of this Act intestate as to that real estate—according to the provisions of the enactments and law which would have applied thereto if this Act had not been passed.

20 **14.** The real 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 making or charging duties or fees on the estates of deceased persons, and for the payment of his debts in the ordinary course of administration; and for those purposes the  
25 administrator may, in as full and effectual a manner in law as the testator or intestate could have done in his lifetime, sell, lease, or mortgage that real estate, or any part thereof, with or without a power of sale, and convey, demise, or assure the same to a purchaser, lessee, or  
30 mortgagee.

Real estate to be assets for payment of debts.

1908, No. 3, s. 5

**15.** Any such sale or lease may be either by public auction or private contract, and subject to such conditions as the administrator thinks fit, and the administrator may buy in, and rescind any contract, without being  
35 responsible for any involuntary loss thereby occasioned.

Sale or lease, how made.

*Ibid.*, s. 6

**16.** (1) In addition to the powers conferred by sections *fourteen*, *fifteen*, and *twenty-three* of this Act, an administrator shall have an absolute power of sale of any real estate without any limitations whatever  
40 (except as herein provided), subject to any estate or interest lawfully created therein prior to any such sale; and the proceeds of any such sale shall be assets in the hands of the administrator for the purposes of this Act:

Absolute power of sale.

*Ibid.*, s. 7

Provided that the power of sale conferred by this section shall not be exercised without the consent of the Court; but that consent shall not be necessary where the sale is made by the administrator in exercise of any duty or power imposed or conferred upon or vested in him by section *fourteen* or section *twenty-three* of this Act. 5

(2) This section shall extend to any administrator to whom administration has heretofore been granted as to any estate unadministered. 10

Where deed executed under power, title of purchaser, &c., not impeachable. 1908, No. 3, s. 8

17. Where a deed or other instrument is made or executed in professed exercise of the power to sell, lease, or mortgage conferred by 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 has 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. 15 20

Administrator to represent real estate. Ibid., s. 10

18. 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. 25 30

Partition may be ordered. Ibid., s. 12

19. Where upon inquiry the Court is satisfied that a partition of the real estate would be advantageous to the parties interested therein, the Court may order a partition or may appoint one or more arbitrators to effect a partition, and to exercise in regard thereto, under its directions and control, such powers as it thinks fit; and if the report and final award of the arbitrator is approved by the Court, the administrator shall, by conveyance or transfer, give effect to the same accordingly. 35 40

Rights and duties of administrator. Ibid., s. 13

20. The administrator of any deceased person shall have the same rights and be subject to the same duties with respect to the real estate of that person that he has and is subject to with respect to the personal

estate of that person, and shall perform the duties imposed on the executor or administrator by any Act making or charging duties or fees on the estates of deceased persons.

5 *Course of Administration*

21. 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 that person shall be entitled to any priority or preference by  
10 reason merely that it is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt; but all the creditors of that person, as well specialty as simple contract, shall be treated as standing in equal degree  
15 and be paid accordingly out of the assets of the deceased person, whether those assets are legal or equitable:

Specialty and simple contract debts stand in equal degree. 1908, No. 3, s. 15

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  
20 payment of his debt.

22. 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 estates (if more than one) shall be liable to make good the deficiency, in  
25 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.

Liability of specific devise or bequest where estate primarily liable is insufficient. Ibid., s. 16

23. (1) On the death of a person intestate as to any real or personal estate, his administrator shall have  
30 power to sell the real estate and to call in, sell, and convert into money such part of the personal estate as may not consist of money, with power to postpone such sale and conversion for such a period as the administrator, without being liable to account, may think proper,  
35 and so that any reversionary interest be not sold until it falls into possession, unless the administrator sees special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special  
40 reason.

Power of sale on intestacy. 1944, No. 19, ss. 1 (3), 4

(2) This section shall have effect notwithstanding that the 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.

(4) This section does not apply in any case where the death occurred before the first day of January, nineteen hundred and forty-five (being the date of the commencement of the Administration Amendment Act 1944). 5

Power for executors and administrators to pay debts, &c.

1924, No. 33, s. 2 (1), (4)

Administrator may require claimant to prosecute claim against estate within three months and may distribute estate after notice.

1911, No. 8, s. 3; 1908, No. 200, s. 74

**24.** An administrator, whether appointed before or after the commencement of this Act, may pay or allow any debt or claim on any evidence that he thinks sufficient. 10

**25.** (1) Where an administrator has given such notices as [*a Judge, upon application by petition to him*] the **Court** directs, for creditors and others to send in to the administrator their claims against the estate of the testator or intestate, the administrator, at the expiration of the time named in the notices or the last of the notices for sending in the claims, may distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which the administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claims the administrator has not had notice at the time of distribution of the assets, or a part thereof, as the case may be. 15

(2) Nothing in subsection *three* of this section shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the persons who have received them. 20

(3) Where an administrator rejects a claim against the estate he is administering, he may serve upon the person by whom or on whose behalf the claim is made a notice calling upon him, within a period of three months from the date of service of the notice, to take legal proceedings to enforce the claim and also to prosecute the proceedings with all due diligence. 25

(4) If at the expiration of that period that person does not satisfy the [*Supreme*] Court that he has commenced the proceedings and is prosecuting them with all due diligence, the Court, on the application of the administrator, may make an order barring the claim. 30

No right of retainer in administration. 1908, No. 3, s. 18

**26.** 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 35 40



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  
5 if he had not been the administrator.

**27.** No person appointed an administrator upon an application made by him as the attorney or agent for an executor or administrator absent from New Zealand shall be deemed liable to account to any one in respect  
10 of his administratorship excepting only to the executor or administrator whose attorney or agent he was, or to any person who, after his appointment as such attorney or agent as aforesaid, is appointed executor or administrator of the same estate.

Liability of administrator.  
1908, No. 3,  
s. 19

**28.** Every administrator to whom real estate passes under the provisions of this Act shall make and exhibit the like accounts in reference to that real estate, and shall be liable to the like penalties for neglect, as may  
15 for the time being be required to be made or exhibited by or as may be enforced against any person to whom  
20 administration of the personal estate of any person dying intestate is granted.

Administrator to exhibit accounts.  
*Ibid.*, s. 23

**29.** An administrator shall not be required against his own consent to continue to act as a trustee by  
25 managing the property during an enforced suspension of sale, but shall be entitled, upon suspension of sale being ordered, to relinquish his trust to any person appointed in that behalf by the Court, being an officer of the Court, or the Public Trustee, or such other person as the Court  
30 thinks fit.

Administrator may relinquish trust in certain cases.  
*Ibid.*, s. 25

**30.** (1) An administrator acting under the provisions of this Act who makes any payment or does any act in good faith under or in pursuance of the administration shall not be liable for the sums so paid or the acts so done  
35 by reason of the existence of any will of the deceased owner (where the administrator acts under letters of administration without will annexed), or of any will other than that of which administration has been granted (where he acts under probate or under letters of administration with will annexed), if the existence of the first-  
40 mentioned will or the other will, as the case may be, was unknown to him at the time of making that payment or doing that act.

Administrator acting in good faith protected.  
*Ibid.*, s. 26

(2) Nothing in this section shall affect or prejudice the rights of any person entitled under such will as aforesaid against the person to whom any such payments have been made as aforesaid, but the person so entitled shall have the same remedy against the person to whom those payments were made as he would have had against the administrator if the money had not been distributed under the provisions of this Act. 5

*Executors' Commission*

Commission.  
1908, No. 3,  
s. 20

**31.** (1) The Court may, out of the assets of any deceased person, allow to his administrator or trustee for the time being, in passing his accounts, any such commission or percentage, not exceeding five pounds per cent, for his pains and trouble as is just and reasonable. 10

(2) No such allowance shall be made to any administrator or trustee without a special order of the Court on the final passing of accounts, unless the Court otherwise orders. 15

Executors' commission may be apportioned.  
1939, No. 39,  
s. 2

**32.** Where the Court allows a commission or percentage under section *thirty-one* of this Act in any case in which there are or have been two or more administrators or trustees, whether acting at the same time or at different times, the Court may, in its discretion, apportion the total amount allowed among the administrators or trustees in such manner as it thinks fit, and, in particular, may divide the amount in unequal shares or may make the allowance to one or more of the administrators or trustees to the exclusion of the other or others. 20 25

*Powers and Procedure of Court*

On application Court may order generally as to estate of deceased person.  
1908, No. 3,  
s. 9

**33.** The administrator of an estate or any person beneficially interested therein may from time to time [by petition in accordance with the rules of the Court] apply to the Court, which may, upon such terms as it thinks fit, make any such orders and directions as it thinks proper with respect to— 30 35

- (a) The time and mode of sale or lease of any real estate belonging to the estate administered: 35
- (b) The maintenance or advancement or otherwise of minors out of their shares or interests in the estate: 40
- (c) The expediency or mode of effecting a partition or the mortgaging of any such real estate: 40

(d) The administration of the estate for the greatest advantage of all persons interested:

Provided that nothing in this section shall render it compulsory for the administrator to apply to the Court for leave to exercise the powers of sale or lease given by this Act.

34. (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.

Question of fact may be tried by a jury.  
1908, No. 3, s. 35

(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.

35. The practice of the [*Supreme*] 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.

Practice of Court; its administration jurisdiction.  
Ibid., s. 38

36. Whenever the Court grants an order to the Public Trustee to administer the estate of any deceased person, the order shall be in the form in the *First* Schedule to this Act.

Form of order to Public Trustee.  
Ibid., s. 39

37. Rules may from time to time be made in the manner prescribed by the Judicature Act 1908—

Power to make rules.

(a) For the ordinary guidance of executors or administrators in relation to real estate;

1908, No. 3, s. 40; 1925, No. 19, s. 2

(b) Prescribing the forms of administration;

See Reprint of Statutes, Vol. II, p. 60

(c) Prescribing the practice in obtaining a grant of administration, and the procedure and practice of the Court and the duties of the Registrar; and

(d) Generally for carrying the provisions of this Part of this Act into effect.

#### Caveats

38. 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.

Caveat may be lodged.  
1908, No. 3, s. 27

Where a caveat  
lodged, Court  
may grant  
order *nisi*.  
1908, No. 3,  
s. 28

39. In every case where a caveat is lodged the following provisions shall apply:—

- (a) The Court may, upon [*motion*] 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 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: 15
- (c) 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 order *nisi* may be made absolute or discharged, with or without costs, as may be just, and, if the Court so directs, those costs may be paid out of the estate: 20 25
- (d) 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, 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: 30 35
- (e) 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. 40

*Execution of Wills of Personalty Made Abroad*

40. (1) Every will and other testamentary instrument made out of New Zealand by a British subject or a citizen of the Republic of Ireland (whatever may be his domicile at the time of making the same or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in New Zealand to probate if made as required either by the law of the place where the same was made, or by the law of the place where the person was domiciled when the same was made, or by the law then in force in that part of the Commonwealth or of the Republic of Ireland where he had his domicile of origin.

Wills made abroad to be admitted if made according to the law of the place where made or the place of domicile.  
1908, No. 3, s. 31

15 *New*

(1A) Every will and other testamentary instrument made within New Zealand by a British subject or a citizen of the Republic of Ireland (whatever may be his domicile at the time of making the same or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in New Zealand to probate if made as required by the law of New Zealand.

(2) No will or other testamentary instrument shall, so far as relates to personal estate in New Zealand, be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

30 *Miscellaneous*

41. (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 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 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 his or her death.

Succession to, capacity of, and construction of wills of married women and infants in certain cases.  
1948, No. 77, s. 2

(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 death if she could retain and acquire a domicile distinct from that of her husband: 5

(b) Every infant 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 infant or the mother, whichever first occurs, if the mother could retain and acquire a domicile distinct from that of her husband. 10 15

(3) The local situation of any movable property shall be determined for the purposes of this section in the same manner as it is determined for the purposes of the Death Duties Act 1921. 20

(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 Death Duties Act 1921 if that property would not otherwise be included therein. 25

**42.** (1) Notwithstanding anything to the contrary in any Act, any trust company shall be entitled to apply for and obtain letters of administration of the estate of a deceased person, either with or without the will annexed, and to perform and discharge all other the acts and duties of an administrator as fully and effectually as a private individual may do when granted letters of administration. 30

(2) Letters of administration shall not be granted to a syndie or nominee on behalf of a trust company. 35

(3) In any case in which a trust company is empowered to apply for letters of administration of the estate of a deceased person it shall be lawful for the Court in which, or the officer before whom, the application is made to receive and act upon an affidavit made by a director or by the manager or secretary of the company in place of any affidavit required by the said Court to be made by any person making application for letters of administration. 40

(4) Where any interest in any estate which was vested in a syndie on behalf of a trust company acting as administrator under letters of administration of a 45

See Reprint  
of Statutes,  
Vol. VII,  
p. 354

Letters of  
administration  
may be  
obtained by a  
trust company.  
1945, No. 40,  
s. 3

deceased person became, by virtue of section three of the Statutes Amendment Act 1945, vested in the trust company, the syndie shall be kept indemnified by the company in respect of that interest. 1945, No. 40

5 (5) All securities registered or subscribed in the name of a syndie on behalf of a trust company or any estate or interest in land registered under the Deeds Registration Act 1908 or under the *Land Transfer Act 1952* in the name of a syndie shall be transferred by the syndie to the trust company or as it shall direct. See Reprint of Statutes, Vol. VII, p. 1143

10 (6) This section shall have effect whether the testator or the intestate died before or after the commencement of this Act, and no such vesting or transfer as aforesaid shall operate or be deemed to have operated as a breach of any covenant or condition against alienation or give or be deemed to have given rise to forfeiture. 15

20 **43.** (1) If any person takes possession of or in any manner deals with any part of the estate of any deceased person without obtaining administration of his estate within six months after his decease, or within two months after the termination of any action or dispute respecting the grant of administration of the estate, or within such further time as may be allowed by the Commissioner of Stamp Duties on application, the Commissioner may apply to the Court [*by summons*] for an order commanding the person so taking possession or dealing as aforesaid to deliver to the Commissioner, within such time as the Commissioner may order, an account of the estate of the deceased, and of its value, and to pay such duty as would have been payable if administration had been obtained, together with the cost of the proceedings, or to show cause to the contrary. Dealing with estate of deceased person without administration. 1908, No. 3, s. 33

25 (2) If no cause or no sufficient cause is shown to the contrary, the person so offending shall, in addition to the duties payable by him as aforesaid, forfeit a sum not exceeding five hundred pounds, in the discretion of the [*Judge*] **Court**; but if cause is shown, such order shall be made as seems just. 30

40 (3) Nothing in this section or elsewhere in this Act shall affect the special provisions of any enactment for the time being in force authorizing the payment of money belonging to the estate of any deceased person without requiring administration of the estate to be obtained.

Bondsmen and sureties deemed to be trustees.

1908, No. 3, s. 36

See Reprint of Statutes, Vol. VIII, p. 873

Central record office may be established.

1908, No. 3, s. 41

**44.** 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 1908 and may under that Act apply for relief and to be discharged from the custody of those moneys. 5

**45.** (1) The Governor-General may from time to time, by Order in Council, make regulations—

(a) Providing for the obtaining and depositing in safe custody, in some suitable place in Wellington, of certified copies of all wills hereafter admitted to probate or annexed to letters of administration hereafter granted: 10

(b) Providing for the inspection by the public of all such certified copies, and for the making of copies thereof and extracts therefrom, and prescribing the fees payable on any such inspection or on the making of any such copy or extract. 15

(2) All regulations made under this Act shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the commencement of the next ensuing session. 20 25

*New*

Administration suits.

Cf. 1908, No. 89, s. 89

**45A.** In the administration by the Court of the assets of any deceased person (whether he 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 prevail and be observed as to the rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; 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 this Act. 30 35 40



*New*

45B. In any action or other proceeding for the administration 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, 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.

Costs in administration suits.

*Cf.* 1908, No. 89, s. 96

## PART II

## ADMINISTRATION GRANTED OUT OF NEW ZEALAND

46. For the purposes of this Part of this Act,—

Interpretation.  
1935, No. 19,  
s. 2

“ 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:

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.

47. (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 is granted 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.

Estate of person dying abroad not to vest without administration granted in New Zealand.

1908, No. 3,  
s. 42

(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.

Resealing of probate, &c.  
1908, No. 3,  
s. 43  
1935, No. 19,  
s. 3

**48.** 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 having jurisdiction out of the Commonwealth in pursuance of an Order of Her Majesty in Council, whether made under any Act or otherwise—

are produced to and a copy thereof deposited with any Registrar of the Supreme Court of New Zealand, the probate or letters of administration shall 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.

Seal not to be affixed till duty is paid and administration bond is entered into.  
1908, No. 3,  
s. 44; 1909,  
No. 10, s. 84;  
1935, No. 19,  
s. 4

**49.** 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, 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 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 in the Republic of Ireland, 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.

No probate, &c., granted out of New Zealand to be evidence unless resealed.  
1908, No. 3,  
s. 45

**50.** 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.

51. 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 this Part of this Act; and in particular 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 administration.

Rules of Court.  
1935, No. 19,  
s. 5  
See Reprint  
of Statutes,  
Vol. II, p. 97

### PART III

#### DISTRIBUTION OF INTESTATE ESTATES

52. 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.
53. There shall be no escheat to the Crown for want of heirs or successors.
54. (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, and, in addition, the residue of the estate shall stand charged with the payment of a sum of one thousand pounds to the surviving husband or wife with interest thereon from the date of the death at the rate of four per cent per annum until paid or appropriated, 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:

Application of  
this Part of  
this Act.  
1944, No. 19,  
ss. 1 (3), 12

Abolition  
of escheat.  
1944, No. 19,  
s. 5

Succession to  
real and  
personal estate  
on intestacy.  
Ibid., s. 6

(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: 5

(iii) If the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely: 10

(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 both parents, the estate shall be held in trust for the father and mother in equal shares absolutely: 15

(d) If the intestate leaves no husband or wife or issue but one parent, the estate shall be held in trust for the surviving father or mother absolutely: 20

(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— 25

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 30

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 35

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: 40

(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 lieu of any right to escheat. 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.

55. (1) Where under this Act the estate of 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 the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years 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:

Provided that if any female capable of taking under this paragraph (including this proviso) dies before taking an absolutely vested interest leaving any illegitimate 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 the age of twenty-one years or marry under that age, that child or those children shall take, in equal shares if more than one, the share which his or their mother would have taken if she had not so died:

Statutory trusts in favour of issue and other classes of relatives of intestate. 1944, No. 19, s. 7; 1946, No. 40, s. 2

- (b) The statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when an infant marries that infant shall be entitled to give valid receipts for the income of the infant's share or interest: 5
- (c) The administrator may permit any infant contingently interested to have the use and enjoyment of any personal 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. 10
- (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— 15
- (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: 20
- (b) References in this Act to the intestate "leaving no issue" shall be construed as "leaving no issue who attain an absolutely vested interest": 25
- (c) References in this Act to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue who attain an absolutely vested interest". 30
- (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. 35 40

Right of  
illegitimate  
child and  
mother of  
illegitimate  
child to  
succeed on  
intestacy.  
1944, No. 19,  
s. 8

**56.** For the purposes of the foregoing provisions of this Part of this Act the relationship of a mother to her illegitimate child and of an illegitimate child to its mother shall be deemed to be a legitimate relationship, whether or not the child is a legitimated person: 45

Provided that this section shall not apply in any case where the child has been adopted, whether in New Zealand or elsewhere.

5 **57.** 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 contained in the will.

Application to cases of partial intestacy.  
1944, No. 19,  
s. 9

10 **58.** (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  
15 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.

Construction of documents.  
Ibid., s. 10

(2) Trusts declared in an instrument *inter vivos* made, or in a will coming into operation, before the  
20 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  
25 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.

1944, No. 19

30 (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,  
35 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.

40 **59.** Nothing in the preceding sections of this Part of this Act shall affect or derogate from the provisions of section twenty-two of the Statutes Amendment Act 1939.

Application of Part II of Family Protection Act 1908.  
1944, No. 19,  
s. 11  
1939, No. 39

Right of  
successor on  
intestacy to  
disclaim.  
1951, No. 40,  
s. 2

See Reprint  
of Statutes,  
Vol. VI, p. 984

**60.** (1) Subject to the provisions of this section, where a successor has become entitled under this Act to an interest as a beneficiary in the whole or any part of the real and personal property as to which any person has died intestate,—

5

(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 the age of twenty-one years and is of sound mind and is not a convict within the meaning of section fifty-two of the Prisons Act 1908: 10

(b) The [*Supreme Court may, on motion in that behalf*] **Court may**, by order, disclaim the interest on behalf of the successor or authorize the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor is a convict within the meaning of section fifty-two of the Prisons Act 1908 or has not attained the age of twenty-one years or is not of sound mind. 15 20

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

(a) The successor is living when the disclaimer is made; 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 as to which the intestate person has died intestate, 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 [*Supreme*] Court. [*on motion in that behalf.*] 35

(3) No disclaimer under this section shall be valid if— 40

(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



5 (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

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

10 (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

15 (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:

20 (b) The disclaimer shall not affect the right of the successor to apply to the Court under the Family Protection Act 1908 for provision out of the estate of the intestate person.

See Reprint  
of Statutes,  
Vol. III, p. 292

25 (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 *sixty-one* of this Act to be a transfer of the disclaimed interest—

30 (a) The property as to which the intestate person has died intestate shall be distributed, and death duties 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:

35 (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.

40 (6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.

45 (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 [Supreme] Court which relates to the disclaimer and is made under this section.

Effect of  
bankruptcy on  
disclaimer on  
intestacy or  
under a will;  
and right of  
administrator  
to distribute.  
1951, No. 40,  
s. 3  
See Reprint  
of Statutes,  
Vol. I, p. 466

61. (1) Where a successor disclaims the interest as a beneficiary to which he is entitled under this Act in any real or personal property as to which any person has died intestate, 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 Bankruptcy Act 1908 and of any other Act or rule of law relating to the protection of creditors,—

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

(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.

(2) Where any such successor has disclaimed any such interest in any property and there is no possibility of the disclaimer being void 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 interest or any part of it as if there were no possibility of the disclaimer being or becoming void 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

(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 is about to become void by reason of its being deemed to be a 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 whether the disclaimer was void or about to become void by reason of its being deemed to be a transfer of the disclaimed interest; but nothing in this subsection or in subsection *two* of this section shall affect any right which any person may have to follow and recover any property to which the disclaimer relates.

## PART IV

## ADMINISTRATION BY THE COURT

62. Where an administrator has ascertained that the assets of the deceased available or reasonably likely to be available for payment of the debts of the deceased are not sufficient, or cannot be conveniently converted into money for the purpose of meeting the several claims thereon, he may [*petition*] **apply** to the Court to have the estate of the deceased administered under this Part of this Act.

Administrator may apply for order of administration in certain cases. 1908, No. 3, s. 54

63. Either at the time of filing the [*petition*] **application**, or within the prescribed time thereafter, or such further time as the Court on application allows, the administrator shall also file in the Court an account verified by affidavit showing the assets, debts, and liabilities of the deceased so far as they are known to him, which account he may from time to time amend.

Accounts to be filed in Court. *Ibid.*, s. 55

64. On the application of an administrator who has filed [*such a petition, or, in the event of his failing to make an application*] **an application under section sixty-two of this Act, or, in the event of his failing to make any such application** at the next available sitting of the Court, then, on the application of any creditor or claimant of or upon the estate of the deceased, or any person beneficially interested therein, the Court may, if it thinks fit, make an order for the administration of the estate under this Part of this Act.

Court may order estate to be administered. *Ibid.*, s. 56

65. Any creditor of a deceased debtor whose debt is not satisfied by the administrator on application to him may, although no [*petition*] **application** has been filed under section *sixty-two* of this Act, [*petition*] **apply** to the Court to have the estate of the deceased debtor administered under this Part of this Act.

Creditor may apply to Court. *Ibid.*, s. 57

66. Upon the prescribed notice being given to the administrator, the Court, upon proof of the [*petitioner's*] **applicant's** debt, unless satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts of the deceased and that the creditors will not be prejudiced by the estate being administered in the usual way, or unless the administrator in the meantime [*petitions*] **makes application** under section *sixty-two* of this Act, may make an order for the administration of the estate under this Part of this Act, or may, upon cause shown, dismiss the [*petition*] **application**, with or without costs; and, whatever may be the event of any such application, the Court shall have full power to order costs to be paid by either party to the other.

Jurisdiction of Court in such cases. *Ibid.*, s. 58

When order  
may not be  
made.  
1908, No. 3,  
s. 59

**67.** An order for administration under this Part of this Act shall not be made upon a creditor's [*petition*] **application** without the consent of the administrator until the expiration of two months from the date of the grant of probate or letters of administration, unless the administrator has filed [*a petition as aforesaid*] **an application under section sixty-two of this Act** and has not proceeded therewith, or unless the [*petitioner*] **applicant** proves to the satisfaction of the Court that the deceased made some fraudulent preference, or committed an act of bankruptcy within three months prior to his decease, or that the administrator has preferred or is about to prefer any creditor, or is not, in the opinion of the Court, properly administering the estate.

Court may  
order estate  
to be  
administered  
by Official  
Assignee or  
Public Trustee.  
Ibid., s. 60

**68.** The Court, if of opinion that any estate in respect of which [*a petition*] **an application** for an order for administration under this Part of this Act has been filed is likely to be better administered by the Official Assignee in Bankruptcy, or by the Public Trustee, or by some person other than the administrator, may order, by the original or any subsequent order, that the administrator shall cease to administer the estate, and that the estate be administered by the Official Assignee, or by the Public Trustee, or by such other person as aforesaid.

Effect of  
such an order.  
Ibid., s. 61

**69.** Upon an order being made for the administration of an estate under this Part of this Act the whole of the estate, at the date of the presentation of the [*petition*] **application** upon which the order is made, shall vest in the administrator, or the Official Assignee in Bankruptcy, or the Public Trustee, or such other person as aforesaid (hereinafter referred to as the appointee) as the Court by that order or any subsequent order directs; and the appointee shall forthwith proceed to realize, administer, and distribute the estate in accordance with the law and practice for the time being in force with respect to the realization, administration, and distribution of the property of a bankrupt debtor, subject, however, to the modifications made therein by this Act or any rules thereunder.

Power of  
Public Trustee  
in regard to  
insolvent  
estates.  
Ibid., s. 62

**70.** Where an estate of which the Public Trustee is possessed as executor or under an order to administer is apparently insolvent, the filing of a certificate under his hand in the Court out of which the probate or order issued, to the effect that he elects to administer under this Part of this Act, verified as may be prescribed by rules, shall have the effect of [*a petition*] **an application** and order made thereon.

71. With respect to every estate as to which [*a petition*] **an application** for administration under this Part of this Act is pending, the Court shall, during the pendency of the [*petition*] **application**, and with respect to every estate ordered to be administered without any limit, have the same jurisdiction, authority, powers, and functions as for the time being belong to the Court in its bankruptcy jurisdiction and are necessary for the purposes of this Act.

Court to have jurisdiction of Court in bankruptcy.  
1908, No. 3,  
s. 63

72. Where under the provisions of this Part of this Act an estate is administered by the Official Assignee, the provisions of section one hundred and seventy-one of the Bankruptcy Act 1908 shall, with the necessary modifications, apply and be deemed to have always applied as if the proceedings had been taken under that Act.

Official Assignee entitled to commission when administering estates under this Act.  
1937, No. 38,  
s. 2  
See Reprint of Statutes, Vol. I, p. 569

73. With respect to every estate as to which an order for administration under this Part of this Act is made, the following provisions shall apply:—

Provisions as to administration of estates.  
1908, No. 3,  
s. 64

(a) The appointee shall have the same authorities, powers, and functions as the Official Assignee has under the law for the time being in force relating to bankruptcy with respect to the property of a person adjudged a bankrupt:

(b) Any claim by the administrator or the appointee in respect of the proper funeral and testamentary expenses incurred by him in and about the deceased debtor's estate, and in respect of any amount allowed by the Court for his own expenses or allowances, shall be deemed a preferential debt under the order, and be payable in full out of the estate in priority to all other debts.

(c) If any surplus remains in the hands of the appointee after payment in full of all the debts due by the deceased debtor, together with the costs of the administration and any other moneys that would be payable in case of bankruptcy, that surplus shall be paid over or applied as may be approved by the Court, having regard to the interests of the persons entitled thereto:

(d) Notice to the administrator of a deceased debtor of the presentation by a creditor of [*a petition*] **an application** under this Part of this Act

shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after that notice no payment or transfer of property made by the administrator, except in pursuance of the order, shall operate as a discharge to him: 5-

(e) Every conveyance, transfer, charge, settlement, bill of sale, payment, obligation, proceeding, act, and thing made, incurred, taken, done, or suffered by the deceased in his lifetime which would, if he had become bankrupt at the date of his death, have been fraudulent or void as against the Official Assignee or the creditors of the deceased shall be liable to be treated as void or to be set aside by the appointee as if the deceased had been alive: 10- 15-

(f) Notwithstanding anything herein, proceedings to avoid or set aside any voluntary settlement shall be taken only with leave of the Court, and only to the extent and upon such terms and conditions as the Court directs; and the Court before granting leave shall require the appointee to disclose the condition of the estate, and whether it is likely that sufficient will be realized thereout to pay the creditors without recourse to the property included in any such voluntary settlement, and shall not grant leave unless it appears that the property included therein or some part thereof is required to enable full payment of the debts of the estate to be made. 20- 25- 30-

Saving of acts done, &c., before order made. 1908, No. 3, s. 65

**74.** Nothing in this Act shall invalidate any payment made or any act or thing done in good faith by the administrator before the time when notice was given to him of an intention to apply for an order for administration under this Part of this Act. 35-

Appeal as in bankruptcy. Ibid., s. 66

**75.** An appeal shall lie from any order of the Court made under this Part of this Act in like manner as it would lie from a decree or order of the Court in its bankruptcy jurisdiction. 40-

Power to make rules. Ibid., s. 67 See Reprint of Statutes, Vol. II, p. 60

**76.** (1) Rules may from time to time be made in the manner prescribed by the Judicature Act 1908 to give effect to this Part of this Act and the due management and distribution thereunder of the assets of any estate. 45-

(2) Without limiting the general power hereinbefore conferred, it is hereby declared that rules may be made under this section as to all or any of the following matters:—

- 5 (a) The forms of [*petition*] **application** to be made, and of any account to be filed, and how the same shall be verified:
- (b) The manner and times in which debts or claims of creditors may be made and proved:
- 10 (c) The allowance or disallowance of any such debt or claims:
- (d) The appearance of creditors or other persons on any application in respect of the estate or in relation thereto, and the procedure in case of
- 15 the absence of any creditor or other person:
- (e) The notices to be given, and by and to whom the same shall be given, for any purpose, including the making of any order or the confirmation or variation thereof, and the forms of any such
- 20 notice or order:
- (f) The manner and times at which creditors' meetings may be held.
- (3) Provision may be made in and by any such rules for adopting in whole or in part the practice and procedure of the Supreme Court, either in its ordinary jurisdiction or in its bankruptcy jurisdiction, whether prescribed by statute or by rules, for all or any purposes thereof.

## PART V

30

### GENERAL

77. (1) The enactments specified in the *Second* Schedule to this Act are hereby repealed. Repeals and savings.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the

35 repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and

40 could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done. See Reprint of Statutes, Vol. VIII, p. 568

Schedules.

## SCHEDULES

Section 36

## FIRST SCHEDULE

## ORDER TO PUBLIC TRUSTEE TO ADMINISTER

In the Supreme Court of New Zealand, }

The            day of            19            .  
 UPON reading the affidavits of            , it is ordered that the  
 Public Trustee shall be administrator of all the real and personal  
 estate of            , deceased [*with the will of the said  
 annexed*].

Section 77 (1)

## SECOND SCHEDULE

## ENACTMENTS REPEALED

- 1908, No. 3—  
 The Administration Act 1908. (Reprint of Statutes, Vol. III,  
 p. 128.)
- New*
- 1908, No. 89—  
 The Judicature Act 1908: Sections 89 and 96. (Reprint of  
 Statutes, Vol. II, p. 86.)
- 1908, No. 200—  
 The Trustee Act 1908: Section 74. (Reprint of Statutes,  
 Vol. VIII, p. 896.)
- 1911, No. 8—  
 The Administration Amendment Act 1911. (Reprint of  
 Statutes, Vol. III, p. 152.)
- 1924, No. 33—  
 The Trustee Amendment Act 1924: Subsections (1) and (5)  
 of section 2. (Reprint of Statutes, Vol. VIII, p. 917.)
- 1935, No. 19—  
 The Administration Amendment Act 1935.
- 1937, No. 38—  
 The Statutes Amendment Act 1937: Section 2.
- 1939, No. 39—  
 The Statutes Amendment Act 1939: Section 2.
- 1941, No. 26—  
 The Statutes Amendment Act 1941: Section 2.
- 1944, No. 19—  
 The Administration Amendment Act 1944.
- 1945, No. 40—  
 The Statutes Amendment Act 1945: Section 3.
- 1946, No. 40—  
 The Statutes Amendment Act 1946: Section 2.
- 1948, No. 77—  
 The Statutes Amendment Act 1948: Section 2.
- 1950, No. 54—  
 The Crown Proceedings Act 1950: So much of the First  
 Schedule as relates to the Administration Act 1908.
- 1951, No. 40—  
 The Administration Amendment Act 1951.