

[AS AMENDED BY THE COMMITTEE ON THE BILL]

House of Representatives, 20th November, 1945.

Mr. Cotterill

JOHN DUNCAN McGRUER ESTATE

[PRIVATE BILL]

ANALYSIS

Title.	2. Interpretation.
Preamble.	3. Variation of trusts of will.
1. Short Title.	4. Private Act.

A BILL INTITULED

AN ACT *to enable the Supreme Court of New Zealand* Title.
to vary the Trusts created by the Will of the
late John Duncan McGruer, late of Christchurch,
5 Importer, by making Provision for his Son Eoin
Harvey McGruer.

WHEREAS John Duncan McGruer, late of Christ- Preamble.
church, importer, died on the twelfth day of April,
nineteen hundred and twenty-three, having made his
10 last will and testament dated the twenty-ninth day of
March, nineteen hundred and twenty-three, which said
will was duly proved in the Supreme Court of New
Zealand at Christchurch on the twenty-seventh day
of April, nineteen hundred and twenty-three: And
15 whereas the said John Duncan McGruer left him
surviving his son Eoin Harvey McGruer, but ~~made no~~
~~provision or no~~ *it appears that there are good grounds*
for believing that he failed to make adequate provision
for the proper maintenance and support of his said son:
20 And whereas the said Eoin Harvey McGruer has made
no application under the Family Protection Act, 1908,

~~and by reason of the lapse of time and of the performance of the trusts of the said will the said Eoin Harvey McGruer is now precluded from so applying~~

New

for such provision: And whereas the time for his making such an application has expired, and cannot be extended by the Supreme Court of New Zealand under the proviso to subsection nine of section thirty-three of that Act by reason of the fact that the estate of the said John Duncan McGruer is now held by his executors as trustees for the beneficiaries under the said will, and is accordingly deemed under the law applicable to that estate to have been finally distributed within the meaning of that proviso: 5 10

And whereas the said Eoin Harvey McGruer is in need of such provision, and it is desirable that 15

Struck out

such provision should be made and that the trusts of the said will should be varied accordingly: And whereas the said trusts cannot be so varied otherwise than by legislation: 20

New

the Supreme Court of New Zealand should be authorized to inquire into the provision which should be made and to vary the trusts of the said will accordingly: And whereas the objects of this Act cannot be attained otherwise than by legislation: 25

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:— 30

Short Title.

1. This Act may be cited as the John Duncan McGruer Estate Act, 1945.

Interpretation.

2. In this Act, if not inconsistent with the context,—

“Estate” means the balance of the estate of the said John Duncan McGruer still in the hands or under the control of the trustees: 35

New

“Testator” means the said John Duncan McGruer: 40

“ Trustees ” means Leonard Alfred Bone, of Hawera, draper, and James Barnett, of Wellington, secretary, and the trustee or trustees for the time being acting in lieu of or in addition to the said Leonard Alfred Bone and James Barnett, or either of them:

“ Will ” means the will of the said John Duncan McGruer.

Struck out

10 **3. (a)** Notwithstanding anything to the contrary in the will, the trustees shall hold the estate upon trust to pay to the said Eoin Harvey McGruer, free of all death duties, an annuity of five hundred pounds, payable in quarterly instalments, as from the day of nineteen hundred and forty , so long as he shall live.

Variation of trusts of will.

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20 (b) Such annuity, notwithstanding any appropriation made by the trustees, shall rank in priority to the bequest of the surplus income of the estate at the discretion of the trustees to or for the benefit of the Salvation Army and other charitable institutions in New Zealand not specifically named and to the gift of the residuary real and personal estate as made and provided by the will to or for the benefit of the Commissioner for New Zealand of the Salvation Army and the Moderator of the Presbyterian Church of New Zealand, but shall rank after all other bequests and dispositions bequeathed and provided for by and in the will.

New

30 **3A. (1)** An application to the Supreme Court for an order under section thirty-three of the Family Protection Act, 1908, making such provision for the said Eoin Harvey McGruer out of the estate as the Court thinks fit may be made at any time within twelve months after the passing of this Act.

Authorizing application to Supreme Court to vary trusts of will.

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40 (2) Subject to the provisions of this Act, an application made under this Act shall be heard and determined by the Supreme Court as if it had been made within the time limited in that behalf by subsection nine of the said section thirty-three, and the provisions of Part II of the Family Protection Act, 1908, so far as they are applicable, shall apply accordingly.

New

(3) In considering any application under the provisions of this Act the Supreme Court shall not be bound by the strict rules of evidence, but may receive such evidence and draw such conclusions therefrom as it thinks fit, and may have regard to circumstances arising subsequently to as well as those existing at the death of the testator. 5

(4) Notwithstanding any appropriation made by the trustees, any provision made by the Supreme Court on an application under this Act shall rank in priority to the bequest of the surplus income of the estate at the discretion of the trustees to or for the benefit of the Salvation Army and other charitable institutions in New Zealand not specifically named, and to the gift of the residuary real and personal estate as made and provided by the will to or for the benefit of the Commissioner for New Zealand of the Salvation Army and the Moderator of the Presbyterian Church of New Zealand, but shall rank after all other bequests and dispositions bequeathed and provided for by and in the will. 10 15 20

(5) The costs as between solicitor and client of all parties of and incidental to the promotion of this Act and of any application to the Supreme Court under this Act shall be taxed by the Registrar of the Supreme Court at Wellington and paid out of the estate. 25

Private Act.

4. This Act is hereby declared to be a private Act.