

*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.*  
*Legislative Council,*  
*24th October, 1906.*

*Hon. Mr. Pitt.*

## TESTATOR'S FAMILY MAINTENANCE.

### ANALYSIS.

<p>Title.</p> <p>1. Short Title.</p> <p>2. Interpretation.</p> <p>3. Testator's estate liable for maintenance of wife, husband, or children.</p>	<p>4. Duty on estate, how computed. Refund of duty paid in excess.</p> <p>5. Right of appeal.</p> <p>6. Repeals.</p>
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### A BILL INTITULED

AN ACT to consolidate and amend certain Acts insuring Provision Title.  
 for Testators' Families.

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

1. The Short Title of this Act is "The Testator's Family Maintenance Act, 1906." Short Title.

2. In this Act "Court" means the Supreme Court or any Judge Interpretation.  
 10 thereof, and in the case of deceased Maoris means the Native Land 1900, No. 2, sec. 2.  
 Court.

3. (1.) If any person dies leaving a will, and without making Testator's estate  
 therein adequate provision for the proper maintenance and support of liable for  
 his or her wife, husband, or children, the Court may at its discretion, maintenance of  
 15 on application by or on behalf of the said wife, husband, or children, wife, husband, or  
 order that such provision as the Court thinks fit shall be made out of children.  
 the estate of the testator for such wife, husband, or children. Ibid, sec. 2.

(2.) The Court may attach such conditions to the order as it thinks  
 fit, or may refuse to make an order in favour of any person whose  
 20 character or conduct is such as in the opinion of the Court to dis-  
 entitle him or her to the benefit of an order under this Act.

(3.) In making an order the Court may, if it thinks fit, order  
 that the provision may consist of a lump sum or a periodical or other  
 payment.

25 (4.) The incidence of the payment or payments ordered shall,  
 unless the Court shall otherwise determine, fall rateably upon the  
 whole estate of the testator, or, in cases where the authority of the  
 Court does not extend or cannot directly or indirectly be made to  
 extend to his whole estate, then to so much thereof as is situate in  
 30 New Zealand.

(5.) The Court shall have power to exonerate any part of the testator's estate from the incidence of the order, after hearing such of the parties as may be affected by such exoneration as it shall think necessary, and may for that purpose direct any executor to represent, or appoint any person to represent, any such party. 5

(6.) The Court shall have power at any time to fix a periodic payment or lump sum to be paid by any legatee or devisee, to represent, or in commutation of, such proportion of the sum ordered to be paid as falls upon the portion of the estate in which he is interested, and to exonerate such portion from further liability, and to direct in what manner such periodic payment shall be secured, and to whom such lump sum shall be paid, and in what manner it shall be invested for the benefit of the person to whom the commuted payment was payable. 10

(7.) Whenever an application has been filed on behalf of any person it may be treated by the Court as, and, so far as regards the question of limitation, shall be deemed to be an application on behalf of all persons who might apply. 15

1900, No. 2, sec. 3.

(8.) Upon any order being made under this Act the portion of the estate comprised therein or affected thereby shall be held subject to the provisions of the order. 20

(9.) No application shall be heard by the Court at the instance of a party claiming the benefit of the Act unless such application is made within *twelve* months from the date of the grant in New Zealand of probate of the will: 25

Provided that the time for making an application may be extended for a further period of *twelve* months by the Court or a Judge, after hearing such of the parties affected as the Court or Judge shall think necessary, and this power shall extend to cases where the time for applying has already expired, including cases where it expired before the passing of this Act: 30

Provided that in such cases the application for extension be made within *twelve* months from the date of the grant of probate.

(10.) An executor may apply on behalf of any infant or any person of unsound mind in any case where such person might apply or may apply to the Court or a Judge for advice or directions as to whether he ought so to apply; and, in the latter case, the Court may treat such application as an application on behalf of such person for the purpose of avoiding the effect of limitation. 35

(11.) The application by an executor, when made on behalf of a person who was an infant at the date of the testator's death, may be made within two years after the grant of probate of the testator's will; otherwise his application shall be subject to the same limitation as that of a party claiming on his own behalf. 40

(12.) No mortgage, charge, or assignment of any kind whatsoever of or over such provision, made before the order of the Court is made, shall be of any force, validity, or effect; and no such mortgage, charge, or assignment made after the order of the Court is made shall be of any force or validity unless made with the permission of the Court or a Judge thereof. 45

(13.) Where the Court has ordered periodic payments, or has ordered a lump sum to be invested for the benefit of any person, it 50

shall have power to inquire whether at any subsequent date the party benefited by its order has become possessed of or entitled to provisions for his or her proper maintenance or support, and into the adequacy of such provision, and may discharge, vary, or suspend its order or make such other order as shall be just in the circumstances.

4. (1.) Where an order is made by the Court under this Act, all duties payable on the transmission of the estate under the will of the testator shall be computed as if the provisions of the order had been part of the will.

Duty on estate,  
how computed.  
1903, No. 21, sec. 2.

10 (2.) Any duty paid in excess of the amount required to be paid under this section shall on application, and without further appropriation than this Act, be returned by the Minister of Stamp Duties to the person entitled to receive the same.

Refund of duty  
paid in excess.

15 5. From any order made under this Act a party prejudicially affected may appeal to the Court of Appeal, and may apply to the Court or a Judge for directions as to who is to be served with notice of such appeal.

Right of appeal.

20 6. (1.) "The Testator's Family Maintenance Act, 1900," and "The Testator's Family Maintenance Amendment Act, 1903," are hereby repealed.

Repeals.

(2.) Any application made under any repealed Act which has not on the coming into operation of this Act been decided by the Court may be heard and determined under this Act.