

Legislative Council.

No. , 1913.

A BILL

To assure to the widow or widower and family of a testator an adequate maintenance from the estate of such testator; to amend the law relating to the guardianship of infants; and for purposes incidental thereto or consequent thereon.

[MR. HALL;—20 August, 1913.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Testator's Family Maintenance Act, 1913." Short title.

66339

C 13—A

2.

Definition.

2. In this Act, unless the context otherwise requires—
“ Court ” means the Supreme Court in its equitable
jurisdiction, or any judge thereof.

Testator's family maintenance.

Testators'
estate liable
for mainten-
ance of wife,
husband, or
children.

N.Z. Act,
No. 60, 1908,
s. 33 (1).

3. (1) If any person (hereinafter called “ the tes- 5
tator ”) dies leaving a will, and without making therein
adequate provision for the proper maintenance and
support of the testator's wife, husband, or children, the
court may, at its discretion, on application by or on
behalf of the said wife, husband, or children, order that 10
such provision as the court thinks fit, shall be made out
of the estate of the testator for such wife, husband, or
children.

(2) The court may attach such conditions to the
order as it thinks fit, or may refuse to make an order in 15
favour of any person whose character is such as in the
opinion of the court to disentitle 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 20
or a periodical or other payment.

Ibid. subsec.
(8).

(4) 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 25
order.

Time within
which
application
must be
made.

Ibid. subsec.
(9).

4. (1) No application shall be heard by the court at
the instance of a party claiming the benefit of this Act
unless the application is made within twelve months
from the date of the grant in New South Wales of
probate of the will : 30

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 thinks necessary :

Provided also that in such cases the application 35
for extension shall be made within twelve months from
the date of the grant of probate.

Ibid. subsec.
(7).

(2) Where 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 40
to be, an application on behalf of all persons who might
apply. 5.

5 **5.** (1) The incidence of the payment or payments
ordered shall, unless the court otherwise determines,
fall ratably 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
the whole estate, then to so much thereof as is situate
in New South Wales.

Incidence of
payments.
N.Z. Act,
No. 60, 1908,
s. 33 (4).

10 (2) The court may 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 thinks necessary, and may for that
purpose direct any executor to represent, or appoint any
person to represent, any such party.

15 **6.** (1) The court may at any time fix a periodic
payment or lump sum to be paid by any legatee or
devisee, to represent, or in commutation of, such pro-
portion of the sum ordered to be paid as falls upon the
portion of the estate to which he is entitled under the
will, and may exonerate such portion from further
20 liability, and 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.

Court may fix
periodic
payment or
lump sum.
Ibid. 33 (6).

25 (2) Where the court has ordered periodic pay-
ments, or has ordered a lump sum to be invested for the
benefit of any person, it may inquire whether at any
subsequent date the party benefited by its order has
become possessed of or entitled to provisions for his
30 proper maintenance or support, and into the adequacy
of such provisions, and may discharge, vary, or suspend
its order, or make such other order as is just in the
circumstances.

Ibid. subsec.
(13).

35 **7.** (1) An executor may apply on behalf of any
person being an infant or 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,
40 for the purpose of avoiding the effect of limitation.

Executor
may apply in
certain cases.
Ibid. subsec.
(10).

(2)

N.Z. Act,
No. 60, 1908,
subsec. (11).

(2) The application by an executor, when made on behalf of the 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. 5

Mortgage,
&c., over
provisions
made by
court to be
invalid.

Ibid.
subsec. (12).

8. 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, validity, or effect, unless made with the permission of the court, or a judge thereof. 10

Duty on
estate, how
computed.

Ibid. s. 34.

9. (1) Where an order is made by the court under this Act, all probate duties payable under the will of testator shall be computed as if the provisions of the order had been part of the will. 15

(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 Colonial Treasurer to the person entitled to receive the same. 20

Guardianship of infants.

On death of
father,
mother to be
guardian.

Eng. Act, 49
and 50 Vic.,
ch. 27, s. 2.

10. On the death of the father of an infant, and in case the father has died prior to the passing of this Act then, from and after the passing of this Act, the mother if surviving, shall, subject to the provisions of this Act, and notwithstanding any appointment by deed or will made by the father, be the guardian of such infant. 25

Court may
remove
mother from
guardianship
and appoint
joint
guardian.

11. The court may on the application of any person, on being satisfied that it is for the welfare of the infant, remove the mother from such guardianship and appoint another guardian in her place, or they may continue the mother in office as guardian and appoint another guardian to act jointly with her. 30

Mother may
appoint
guardian in
certain cases.
Ibid. s. 3 (1).

12. The mother of any infant may by deed or will appoint any person to be guardian of such infant after the death of herself and the father of such infant (if such infant be then unmarried). 35

The

The guardian so appointed shall act as sole guardian, unless the father has also appointed a guardian, in which case they shall act jointly.

5 **13.** The mother of any infant may, by deed or will, provisionally nominate some fit person to act as guardian of such infant after her death jointly with the father of such infant, and the court after her death, if satisfied that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment
10 of such guardian, or make such other order in respect of the guardianship as the court may think right.

Mother may appoint joint guardian with the father.

Eng. Act, 49 and 50 Vic., ch. 27, s. 3 (2).

14. In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the court for its direction, and the
15 court may make such order regarding the matters in difference as it may think proper.

Guardians may apply to court for directions.

Ibid. s. 3 (3).

15. The court may, in its discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian
20 appointed or acting by virtue of the Act, and may also, if they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

Power of court to remove guardian.

Ibid. s. 6.

General.

25 **16.** The court may make rules for regulating the practice and procedure in any applications and proceedings under this Act, and prescribe the forms in such proceedings.

Rules.

30 Any application under this Act shall be made in accordance with such rules.

Until such rules are made, any application under this Act shall be by motion, and the practice of the Equity Court shall apply thereto.

1875
The following is a list of the names of the persons who have been admitted to the office of Notary Public for the year 1875.

1. J. B. Smith
2. W. H. Jones
3. T. C. Brown
4. M. A. White
5. R. D. Green
6. S. P. Black
7. L. K. Grey
8. N. O. Blue
9. P. Q. Red
10. U. V. Purple
11. X. Y. Orange
12. Z. A. Yellow
13. B. C. Pink
14. F. G. Light
15. H. I. Dark
16. J. K. Bright
17. L. M. Dull
18. N. O. Dim
19. P. Q. Bright
20. R. S. Dull

1876
The following is a list of the names of the persons who have been admitted to the office of Notary Public for the year 1876.

1. J. B. Smith
2. W. H. Jones
3. T. C. Brown
4. M. A. White
5. R. D. Green
6. S. P. Black
7. L. K. Grey
8. N. O. Blue
9. P. Q. Red
10. U. V. Purple
11. X. Y. Orange
12. Z. A. Yellow
13. B. C. Pink
14. F. G. Light
15. H. I. Dark
16. J. K. Bright
17. L. M. Dull
18. N. O. Dim
19. P. Q. Bright
20. R. S. Dull