

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1922.

A BILL

To amend the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and certain other Acts ; and for purposes connected therewith.

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. (1) This Act may be cited as the "Testator's Short title. Family Maintenance Act, 1922."

(2) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is in this Act referred to as the Principal Act.

**2.** The Principal Act is amended as follows :—  
 By inserting after section four the following new section :—

Amendment  
 of Act No. 41  
 of 1916.

4A. Where the court is satisfied that a voluntary disposition was made by the deceased person within one year of his death, and that the disposition was made with intent to evade the provisions of this Act, the court may take into account as one of the circumstances of the case the fact of such voluntary disposition, and may charge the property so disposed of in the hands of the person taking under the voluntary disposition with the whole or such part of the provision as to the court may seem fit.

Voluntary  
 disposition to  
 evade Act.

**3.** The Principal Act is further amended as follows :—  
 By inserting after section five the following new section :—

Further  
 amendment.  
 New section.

5A. In any case where the Public Trustee is of opinion that any such child has been left without adequate provision for his proper maintenance, education, or advancement in life, as the case may be, he may on behalf of such child—

Applications  
 by Public  
 Trustee.

(a) compromise or compound with the executor; or

(b) make application to the court under section three of this Act.

**4.** The Principal Act is further amended as follows :—  
 By omitting subsection three of section six and by inserting in lieu thereof the following new subsection :—

Further  
 amendment.  
 Omission of  
 subsection  
 three of  
 section six  
 and insertion  
 of new  
 subsection.

(3) Where the court has made an order making any provision under this Act the executor, unless the court otherwise orders, shall, within fourteen days from the entering of the order or the day on which he becomes entitled to the delivery from the Registrar of Probates of the probate or letters of administration, whichever last happens—

(a) serve an office copy of the order upon the Registrar of Probates; (b)

(b) have an examined copy thereof certified by the registrar annexed to or endorsed upon the probate or letters of administration, as the case may be.

Any executor failing to comply with the provisions of this subsection shall be liable to a penalty not exceeding *fifty* pounds, which said penalty may be recovered in a summary way before a stipendiary or police magistrate.

5. The Principal Act is further amended as follows:— Further amendment.  
By inserting after section twelve the following short heading and new sections:—

*Maintenance of illegitimate children.*

12A. If any person dies after the commencement of the Testator's Family Maintenance Act, 1922, either testate or intestate, or partly testate and partly intestate, and leaving illegitimate children him or her surviving, who are under the age of twenty-one years, the court, if satisfied that such children or any of them are left without adequate provision for their proper maintenance, education, or advancement in life as the case may be, may at its discretion, and taking into account all the circumstances of the case, on application by or on behalf of such children or any of them, order that such provision for such maintenance, education, and advancement as the court thinks fit shall be made out of the estate of such person. Where such person dies partly testate and partly intestate, the court may order that such provision be made out of the testate or the intestate estate or both.

12B. For the purposes of the last preceding section an illegitimate child shall only be deemed to be an illegitimate child of a testator, testatrix, or intestate—

- (a) against whom an order in respect of such child has been made under the provisions of Part II of the Infant Protection Act, 1904; or
- (b)

*Testator's Family Maintenance.*

(b) who has acknowledged that he is the father or that she is the mother of such child :

Provided that an illegitimate child shall not be deemed to have been so acknowledged, unless such acknowledgment is proved to the satisfaction of the court by the writing of the testator, testatrix, or intestate.

12c. The provisions of this Act, other than section 5A, relating to applications by or on behalf of legitimate children and to orders made thereon shall apply, mutatis mutandis, to applications and orders made under the provisions of the last two preceding sections.

Provisions of Act to apply to applications by illegitimate children.

