

Wills Probate and Administration (Amendment) Bill, 1929.

EXPLANATORY MEMORANDUM.

THIS Bill is designed to meet the position arising where probate of a will or administration of an estate of a living person has been granted and distribution made on evidence or presumption that the person is dead subsequently shown to be erroneous, and to afford adequate protection to persons acting under the order of the court.

Provision is made as to the effect of a revocation of the grant of probate or administration, including provisions as to—

- (a) the obligations of the executor or administrator;
- (b) the validation of payments made by or to him prior to the revocation;
- (c) the repayment from the Consolidated Revenue Fund of the amount of death duty paid in respect of revoked grant; and
- (d) the power of the court to make such vesting order as it deems proper.

The Bill also contains provisions to enable the judges to delegate to the registrar the allowance of commission or percentage to executors, administrators, and trustees, and thus save a number of applications to the court in many instances of a more or less formal character.

The Bill also extends the power of the Probate Court with regard to the application of an infant's share to his maintenance, advancement, and education.

As the Act now stands the power is limited to cases where the share of the infant at the date of the death of an intestate does not exceed £500.

The Bill also provides for the transfer of wills deposited with the Registrar-General in pursuance of section thirty-two to the office of the Registrar of Probates with a view to save time and expense to the public.

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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1929.

A BILL

To amend the law relating to wills probate and administration; to amend the Wills Probate and Administration Act, 1898, 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 "Wills Probate and Administration (Amendment) Act, 1929." Short title.

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(2) This Act shall be construed with the Wills Probate and Administration Act, 1898, and any Acts amending the same.

(3) The Wills Probate and Administration Act, 1898, as so amended, is referred to in this Act as the Principal Act.

2. After section forty of the Principal Act the following sections are inserted:—

Amendment of Act, 1898, No. 18.

New sections.

Evidence or presumption of death.

40A. (1) Where the court is satisfied, whether by direct evidence or on presumption of death, that any person is dead, the court shall have jurisdiction to grant probate of his will or administration of his estate, notwithstanding that it may subsequently appear that he was living at the date of the grant.

(2) The provisions of this Act, the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and Part XV of the Conveyancing Act, 1919, relative to a deceased person shall, unless the context or subject-matter otherwise indicates or requires, extend to any person with respect to whom the court is satisfied in accordance with subsection one of this section that he is dead.

(3) The provisions of this section shall apply to a grant of probate or administration made either before or after the commencement of the Wills Probate and Administration (Amendment) Act, 1929, provided that nothing in this section shall affect any action or proceeding decided before or pending at the commencement of that Act.

40B. (1) If a grant of probate or administration is made on presumption of death only, the provisions of this section shall have effect.

Presumption of death.

(2) The grant shall be expressed to be made on presumption of death only.

(3) The estate shall not be distributed without the leave of the court.

The leave may be given in the grant of probate or administration or by other order, and either unconditionally or subject to such conditions as the court deems reasonable, and in particular, if the court thinks fit, subject to an undertaking being

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being entered into or security being given by any person who takes under the distribution that he will restore any money or property received by him or the amount or value thereof in the event of the grant being revoked.

(4) The court may direct the executor or administrator before distributing the estate to give such notices as the court deems proper in the circumstances, in order that the person whose death has been presumed, if he is still living, or if he has died since the date of the grant, then in order that any person interested in the estate may lodge with the registrar within such time as may be specified a caveat against the distribution.

If the court directs any such notice to be given, the executor or administrator shall not have the benefit of section ninety-two of this Act, unless he complies with the direction.

If a caveat is duly lodged within such time as may be specified, the executor or administrator shall not distribute the estate until the caveat is withdrawn or removed.

(5) An application for leave to distribute the estate and for directions may be made, and a caveat may be lodged withdrawn or removed, as prescribed by rules of court, and the Probate Judge may make such order in respect of costs and otherwise as he deems proper.

(6) The provisions of this section, with the exception of subsection two, shall apply to a grant of probate or administration made either before or after the commencement of the Wills Probate and Administration (Amendment) Act, 1929, but shall not affect any distribution made before such commencement.

40c. (1) Where the court grants probate of the will or administration of the estate of any person, and it subsequently appears that he was living at the date of the grant, the court shall revoke the grant on such terms, if any, with respect to any proceedings at law or in equity commenced by or against

Person living at date of grant.

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against the executor or administrator, and in respect of costs and otherwise, as the court thinks proper.

(2) Proceedings for the revocation may be taken either by the person himself, or if he has died since the date of the grant, by any person entitled to apply for probate or administration or by any person interested in the estate.

The proceedings may be by suit or otherwise as prescribed by rules of court.

(3) The court may at any time, whether before or after the revocation, make such orders, including an order for an injunction against the executor or administrator or any other person, and an order for the appointment of a receiver, as the court may deem proper for protecting the estate.

(4) The provisions of this section shall apply to a grant of probate or administration made either before or after the commencement of the Wills Probate and Administration (Amendment) Act, 1929.

40D. (1) If a grant of probate or administration is revoked under section 40c of this Act, the provisions of this section shall have effect. Effect of revoking grant.

(2) The executor or administrator under the revoked grant shall be bound duly to account and to pay and transfer all money and property received by or vested in him as such executor or administrator and then remaining in his hands as the court may direct, but shall not be liable for any money or property paid or transferred by him in good faith under the probate or administration before the revocation.

Nothing in this subsection shall affect any commission protection indemnity reimbursement or right to which the executor or administrator is entitled under any other provision of this Act.

(3) The revocation shall not invalidate any payment or transfer lawfully made by or to the executor or administrator in the course of administration before the revocation, but nothing in this subsection

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subsection shall prejudice the right of the person himself, or if he has died since the date of the grant, the executor or administrator to whom a grant of probate or administration is made consequent on the revocation, or any other person, to follow assets into the hands of the persons or any of them among whom the same may have been distributed, or who may have received the same.

(4) The person himself, or if he has died since the date of the grant, the executor or administrator to whom a grant of probate or administration is made consequent on the revocation, shall be entitled to receive from the Consolidated Revenue Fund the amount of death duty paid thereto in respect of the revoked grant.

(5) The court may make such vesting order as it deems proper.

(6) The provisions of this section, with the exception of subsection four, shall apply to a grant of probate or administration made either before or after the commencement of the Wills Probate and Administration (Amendment) Act, 1929.

3. Section forty-three of the Principal Act is amended by omitting paragraph (b) and inserting in lieu thereof the following:— Amendment of Act, 1898, No. 13, s. 43.

(b) the passing and allowance of the accounts of executors and administrators, including the allowance of commission or percentage to executors administrators and trustees for their pains and trouble.

4. Section fifty-four of the Principal Act (as inserted therein by section three of the Administration Amending Act, 1906) is omitted and the following section inserted in lieu thereof:— Amendment of Act, 1898, No. 13, s. 54. New section.

54. The court shall have the same power and jurisdiction as the Supreme Court in its equitable jurisdiction to authorise the application of the share or interest of any infant under any will or intestacy for the benefit of the infant. Share of infant.

5. Section eighty-one of the Principal Act is amended by inserting at the end thereof the following subsection :— Amendment of Act, 1898, No. 13, s. 81.

(3) If the grant of probate or administration is revoked under the provisions of section 40c of this Act, the court in which the proceedings are pending may in lieu of the suggestion referred to in subsection one of this section, order that such suggestion be made as it deems proper, and thereupon the proceedings shall be continued in the name of such person as the court directs as if the proceedings had been originally commenced by or against that person, but subject to such conditions and variations, if any, as the court directs, or the court may stay the proceedings on such terms in respect of costs or otherwise as it thinks just.

6. (1) All wills deposited with the Registrar-General in pursuance of section thirty-two of the Principal Act or of any section thereby replaced shall, on a day to be appointed by the Governor and notified by proclamation published in the Gazette, be handed over by the Registrar-General to the Registrar of Probates together with any indices thereof or papers or documents relative to any will so to be handed over, and such wills shall as and from such day so appointed be deemed to be deposited in the office of the said registrar in pursuance of the provisions of section thirty-two of the Principal Act as amended by this section. Transfer of deposited wills from Registrar-General to Registrar of Probates.

(2) As from the day appointed in pursuance of subsection one of this section,— Consequential amendments of Act No. 13, 1898.

(a) Section thirty-two of the Principal Act is amended by omitting the words " the Registrar-General " wherever occurring and by inserting in lieu thereof the words " the Registrar of Probates." Sec. 32.

(b) Section forty-two of the Principal Act is amended by omitting from subsection three thereof the words " the Registrar-General " and by inserting in lieu thereof the words " the Registrar." Sec. 42.

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(c) Section one hundred and four of the Principal Act is amended by omitting from paragraph (d) of subsection one thereof the words "the Registrar-General" and by inserting in lieu thereof the words "him or with the Public Trustee."
