



ANNO NONO

GEORGII V REGIS.

A.D. 1918.

No. 1327.

An Act to assure to the Family of a Testator Adequate Provision out of his Estate.

[Assented to, November 21st, 1918.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Testator's Family Maintenance Act, 1918." Short title.

2. In this Act, unless some other meaning is clearly intended — Interpretation.

"Court" means the Supreme Court or a Judge thereof:

"Executor" means executor of the will of the testator, and includes administrator with the will annexed:

"Order" means order made by the Court under section 3.

3. (1) If any person (in this Act called "the testator") disposes of or has disposed of his property by will in such a manner that the wife, husband, or children of the testator, or any of them, are left without adequate provision for their proper maintenance, education, or advancement in life, the Court may at its discretion, on application by or on behalf of the said wife, husband, or children, or any of them, order that such provision as the Court thinks fit shall be made out of the estate of the testator for the maintenance, education, and advancement of such wife, husband, or children, or any of them.

Testator's estate liable for maintenance etc., of wife, husband, or children.

Cf. N.Z. 60, 1908, s. 33, (1), (2), (3).

(2) Notice

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(2) Notice of such application shall be served by the applicant on the executor, and on such other persons as the Court may direct.

(3) The Court may attach such conditions to the order as it thinks fit, or may refuse to make an order in favor of any person on the ground that his character or conduct is such as, in the opinion of the Court, to disentitle him to the benefit of an order, or on any other ground which the Court thinks sufficient.

(4) In making the order the Court may, if it thinks fit, order that the provision shall consist of a lump sum or periodic or other payments.

Time within which application to be made.

Cf. *ibid.*, s. 33 (9), (10), (11).

4. 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 six months from the date of the grant in this State of probate of the will, or letters of administration with the will annexed of the estate, of the testator: Provided that in any case where the testator has died within three months immediately prior to the date of the passing of this Act, such application may be heard if made within six months from the date of the passing of this Act or of the grant in this State of such probate or letters of administration as aforesaid, whichever of such dates is the later.

Contents of order.

Cf. *Vic.*, 2611, 1915, s. 115.

5. (1) Every order shall, *inter alia*,—

(a) specify the amount and nature of the provision thereby made;

(b) specify the part or parts of the estate of the testator out of which such provision shall be raised or paid, and prescribe the manner of raising and paying such provision; and

(c) state the conditions, restrictions, or limitations imposed by the Court.

Adjustment of burden of provision upon beneficiaries.

(2) The burden of any such provision shall, as between the persons beneficially entitled to the estate of the testator, be borne by those persons in proportion to the values of their respective interests in such estate: Provided that the estates and interests of persons successively entitled to any property which is settled by the will of the testator shall not for the purposes of this subsection be separately valued, but the proportion of the provision to be borne by such property shall be raised or charged against the *corpus* of such property.

Certified copy of order to be made on probate.

(3) The Court shall, in every case in which an order is made, direct that a certified copy of such order be made upon the probate of the will, or letters of administration with the will annexed of the estate, of the testator, and for that purpose may require the production of such probate or letters of administration.

Power to vary or revoke order.

(4) The Court may at any time and from time to time, on the application by motion of the executor or of any person beneficially entitled

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entitled to or interested in any part of the estate of the testator, rescind or alter any order. Notice of such motion shall be served on all persons taking any benefit under the order sought to be rescinded or altered.

(5) 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. Estate to be held subject to order.

(6) The Court may make such order as to the costs of any proceeding under this Act as it deems just. Costs.

6. Every provision made by an order shall, subject to this Act, operate and take effect as if the same had been made by a codicil to the will of the testator executed immediately before his death. Provision to operate as a codicil. Ibid., s. 115 (5).

7. 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 to which he is entitled under the will of the testator, 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. Court may fix periodic payment or lump sum. N.Z. 60, 1908, s. 33 (6).

8. Where the Court has ordered periodic payments, or has ordered a lump sum to be invested for the benefit of any person, it shall have power to inquire whether at any subsequent date the party benefited by the order has otherwise become possessed of or entitled to provision for his proper maintenance, education, and advancement, and into the adequacy of such provision, and may discharge, vary, or suspend the order, or make such other order as is just in the circumstances. Court may vary or discharge order. Ibid., s. 33 (13).

9. No mortgage, charge, or assignment of any kind whatsoever of or over the provision made by an order under this Act, which mortgage, charge, or assignment was made before the making of the order, shall be of any force, validity, or effect; and no such mortgage, charge, or assignment made after the making of the order shall be of any force, validity, or effect unless made with the permission of the Court. Mortgage or assignment of provision invalid. Ibid., s. 33 (12).

10. (1) Where an executor has given notices such as would have been given by the Supreme Court in an administration suit for creditors, beneficiaries, and others to send in to the executor their claims against the estate of the testator, such executor may, at the expiration of the time named in the said notices for sending in such claims, distribute the estate of the testator, or any part thereof, amongst the persons entitled thereto, having regard only to any applications under this Act of which such executor has then notice. Distribution of estate. Cf. Trustee Act, 1893, s. 22 (1).

(2) Such

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(2) Such executor shall not be liable for the estate, or any part thereof, so distributed to any person of whose application under this Act he has not had notice at the time of such distribution.

(3) Nothing in this section shall prevent the Court from ordering that any provision under this Act shall be made out of the estate, or any part thereof, so distributed.

Duty on estate, how computed.

Vict. 2611, 1915, s. 116.

11. For the purpose of apportioning the duty payable on the estate of the testator, any provision made under this Act by an order of the Court shall be deemed to be a bequest made by the testator by a codicil executed immediately before his death and payable in the manner provided by this Act.

Public Trustee deemed to be executor where order has been made authorising him to administer estate.

12. Where an order has been made under the administration and Probate Acts, 1891 to 1914, authorising the Public Trustee to administer the estate of a deceased person who has died leaving a will, then for the purposes of this Act—

(a) the Public Trustee shall be deemed to be the executor of of such person, and

(b) such order shall be deemed to be the grant of probate of the will, or letters of administration with the will annexed of the estate, of such deceased person..

Rules of Court.
No. 116 of 1878.

13. The powers to make, alter, and annul rules conferred by Part V. of the Supreme Court Act, 1878, shall be read as including power to make such rules as may be necessary or convenient for regulating the practice and procedure of the Supreme Court to be adopted for the purposes of this Act, and to alter or annul any such rules.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

H. L. GALWAY, Governor.