

New Zealand.

ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

No. 56.

ANALYSIS.

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AN ACT to amend the law relating to ^{Title.} the Administration of the Estates of Deceased Persons in certain cases.

[30th October 1865.]

WHEREAS it is expedient to make better provision for administering the estates of persons who have died or shall hereafter die possessed of property within the Colony of New Zealand in cases where ^{Preamble.}

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no will or letters of administration relating to such estates shall have been proved or granted in the Colony

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

Short Title.

I. This Act may be cited and referred to as “The Intestate Estates Act 1865.”

Repeal of former Acts and Ordinances.

II. “The Real Estates Administration Act 1860” “The Official Administrators’ Act 1861” sections XV. XIX. XX. and XXI. of “The Supreme Court Amendment Act 1862” and so much of the sixteenth section of the said last-mentioned Act and of the rules touching the administration of estates and effects of persons deceased appended to an Ordinance of the late Legislative Council of New Zealand of session IV. No. 1 intituled “An Ordinance to confirm certain rules forms and tables of fees touching the practice of the Supreme Court” and so much of the rules of the Supreme Court of December the seventeenth one thousand eight hundred and forty-five annexed to an Ordinance of the said Council of session VII. No. 12 intituled “An Ordinance to confirm certain rules forms and tables of fees touching the practice of the Supreme Court” shall so far as such sixteenth section and rules respectively relate to the administration by the Registrar or Deputy-Registrar of the Supreme Court of the estates and effects of persons deceased intestate shall be and the same are hereby respectively repealed Provided always that all proceedings which shall have been commenced in the said Court under the authority of any Ordinance or Act heretofore in force which are still pending and incomplete shall continue in as full force and effect and may be continued executed and enforced as if this Act had not been passed.

Governor may appoint Curators for each Province.

III. It shall be lawful for the Governor in Council from time to time and as occasion may require to appoint for each Province in the Colony a fit and proper person to act as Curator of estates of deceased persons and in like manner to remove such Curators or any successor in office of such Curators and on the death resignation or removal of any such Curator to appoint some other fit and proper person in his stead and it shall be lawful for the Governor in Council from time to time to fix the place or town at which each Curator so appointed shall keep his office.

Same person may be Curator of more Provinces than one.

IV. The Governor in Council may appoint one person to act as Curator for and within one or more of the said Provinces as may be deemed expedient instead of one Curator for each Province.

Succeeding Curator to have power of administrator *de bonis non*.

V. On the death resignation or removal of such Curator or of the successor in office of any such Curator the successor of the Curator so dying resigning or removed shall immediately on his appointment and by virtue thereof become administrator of all and singular the goods chattels and credits of every such deceased person as hereinafter mentioned left unadministered by his predecessor and all the estates goods chattels moneys and effects whatsoever vested in the Curator so dying resigning or removed shall vest in and belong to such successor immediately upon his appointment to such office.

Supreme Court to have summary jurisdiction over Curators.

VI. On the neglect or refusal of any Curator to do any act as administrator in relation to the personal estate of any deceased person of which such Curator is administrator or on his doing or threatening to do any act in breach of his duty as administrator of any such personal estate and on the neglect or refusal of the Curator to do any act which under the provisions herein contained he ought to do in relation to any real estate which he shall have taken possession of under the provisions of this Act or on such Curator doing or threatening to do any act in relation to any such real estate in breach of his duty in any such

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case any person interested as creditor next of kin or otherwise in any such personal estate or as heir-at-law devisee or otherwise in any such real estate may apply *ex parte* upon affidavit to the Supreme Court of New Zealand or to a Judge thereof in chambers for a rule or order calling upon the Curator to show cause upon a day not less than two days from the service of such rule or order upon him before such Court or Judge why he should not do or abstain from doing such act and such rule or order may be granted subject to such conditions as to giving security for costs as the Court or Judge may impose.

VII. Upon the hearing of any such complaint such Court or Judge may receive proof of the matters in relation thereto orally or by affidavit and make such rule or order thereon as the circumstances of the case may require and as to payment of costs by the complainant or by the Curator personally or from the estate administered by him or the profits of the real estate taken possession of by him as in the discretion of the Court or Judge shall seem just And such rules and orders shall have the same effect and be enforceable by the same process and in the same manner as if made by the Court or Judge in a matter or cause within the ordinary jurisdiction of such Court or Judge.

Court or Judge to make such rule or order as case may require.

VIII. Every Curator upon receiving information of the death of any person not being one of the Aboriginal Native race who has died or shall hereafter die either within the Province of the Colony within which he has been appointed to act as Curator or elsewhere possessed of or entitled to personal estate within such Province shall apply to the Supreme Court or to a Judge thereof in chambers for a rule or order to administer the same but no such rule or order shall be granted except upon affidavits of a like nature (as nearly as may be) to those required in the case of a grant of letters of administration in other cases nor unless the said Court shall be satisfied that no Curator in any other Province has been appointed to administer such estate and that no grant of probate of any will or of letters of administration relating to the estate within the Colony of such deceased person has been made and that no person entitled and within the Colony is ready to take such grant and that such estate or some part thereof is exposed and liable to loss waste or injury and such rule may be granted notwithstanding any *caveat* may have been entered against the granting of any probate or letters of administration relating to such estate and notwithstanding any opposition thereto if the said Court shall think fit And every Curator shall give notice as soon as conveniently may be to every other Curator of his intention to make such application.

Curator to apply for rule or order to administer estates of deceased persons.

IX. It shall be lawful for any person by his will or any codicil thereto to appoint any Curator to administer his estate and in such case the Curator appointed shall be bound to apply for a rule or order to administer such estate and the said Court shall grant such rule or order upon being satisfied of the death of the testator and of his having made such will or codicil.

Any person may by will appoint Curator to administer his estate.

X. Every rule or order to administer any estate may be in the form contained in the first Schedule to this Act and when made such Curator shall be administrator of all the goods chattels and credits of the deceased within the Colony and such rule or order shall give to and impose on the Curator the same rights duties and liabilities so far as is not hereby otherwise provided as if letters of administration had been granted to him in the ordinary course of the goods chattels and credits of the deceased and not only within the Province for which he may have been appointed Curator but elsewhere within the Colony But no bond or security by or on behalf of such Curator shall be required on or before the grant of any such rule or order in respect of such grant.

Form and effect of rule or order. Schedule first.

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Estates below fifty pounds. XI. Such Curator shall not be obliged to obtain any such rule or order as aforesaid in the case of any estate the assets of which to be administered shall be under the value of fifty pounds.

Rule or order to be published. XII. Within fourteen days after any such rule or order shall have been granted the Curator obtaining the same shall cause such rule or order to be published twice in such newspaper as the Court or Judge on the granting of such rule shall direct.

Payment of stamp and other duties in respect of estates affected by rule or order. XIII. Every such rule or order shall be subject and liable to the payment of the same duties as may from time to time be payable in respect of probates of wills or letters of administration as the case may be and all payments and appropriations in respect of any estate comprised in or affected by any such rule or order shall be liable to the same stamp legacy and succession duties as the same would have been subject if paid or appropriated by an executor or administrator of the same.

Governor may authorize administration of estate of deceased Aboriginal Native. XIV. It shall be lawful for the Governor of the Colony from time to time by warrant under his hand to authorize and direct any such Curator to administer the estate of any Aboriginal Native person who has died or shall hereafter die either within the Province of the Colony for which such Curator has been appointed to act or elsewhere possessed of or entitled to personal estate within such Province or any other part of the Colony and the Curator shall thereupon administer such estate either subject to and in accordance with such general directions and regulations touching the distribution and administration of the estates of deceased Aboriginal Native persons or subject to and in accordance with such special directions and regulations relating to the particular estate as the Governor in Council may from time to time determine and which general and special directions and regulations when published in the *New Zealand Gazette* shall be of the like force and effect as if incorporated in and forming part of this Act and it shall be lawful for the Governor in like manner to revoke alter and vary such directions and regulations and to make others in lieu thereof which directions and regulations as aforesaid and new directions and regulations when published in like manner shall be of the like force and effect.

Curator to pay all moneys to Colonial Treasury. XV. Every Curator shall pay into the Colonial Treasury to the Colonial Treasurer or to such Sub-Treasurer of the Colony as the Governor shall from time to time direct and in such manner and at such intervals as the Governor shall from time to time direct all moneys paid to him or his agents without any deductions whatever and such moneys shall be placed to the credit of a fund to be called the "Intestate Estates Fund" and every payment made by any Curator into the said Treasury shall be accompanied by a declaration that such payment includes all moneys received by the Curator on account of any estate since the date of the last payment made by him and such declaration shall be in the form in the second Schedule hereto.

Schedule second. Percentage to go to general revenue. XVI. The Colonial Treasurer shall deduct such amount as shall from time to time be fixed by the Governor in Council but not exceeding five pounds per centum from the moneys paid to the credit of the Intestate Estates Fund and the sum so deducted shall be passed to the credit of and shall form part of the general revenue of the Colony.

Curators to receive salary and commission. XVII. The Curators shall be paid such salaries as shall from time to time be fixed by the General Assembly to be paid out of such moneys as shall be apportioned for that purpose and the Curators in addition to such salary shall be entitled to a commission of such amount as shall from time to time be fixed by the Governor in Council but not exceeding two pounds and ten shillings per centum on all moneys

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which shall be received or collected by them as such administrators as aforesaid Provided however that nothing herein contained shall be deemed to authorize any Curator to deduct such commissions from the moneys received before paying the same to the Colonial Treasury.

XVIII. Every Curator shall make or cause to be made an alphabetical inventory or list of all the estates of the persons of whose estates he shall have been appointed administrator and shall keep an account of all his receipts payments and dealings in every such estate and shall keep all letters received and copies of all letters written by him and all deeds papers and writings of and relating to such estates which shall have been in the possession of any such deceased person at the time of his death And any person may at reasonable times inspect the separate accounts relating to any estate at the office of such Curator upon payment of two shillings and sixpence.

Curator to keep lists of property and accounts.

XIX. Every Curator shall in the first week of every month in the year publish in the *New Zealand Gazette* and in such other newspaper or *Gazette* as the Governor shall from time to time direct a tabular alphabetical list or statement setting forth the particulars in the form in the third Schedule to this Act of all the estates which he shall have been appointed to administer during the preceding month so far as his information will enable him to set forth such particulars.

Curators to publish monthly accounts of estates entered on by them.

Schedule third.

XX. Every Curator shall once in every quarter of a year on a day to be fixed by the Governor in Council or oftener if required produce and pass his accounts in each estate of which he shall be appointed administrator before the Registrar of the Supreme Court for the judicial district in which the Curator may reside or such other person or persons as the Governor in Council may from time to time appoint for that purpose but the passing of such accounts shall not prevent his being thereafter liable to any claim which may be at any time made on him in respect of any sum received and not accounted for by him or any sum which might have been received by him but for his wilful neglect or default Provided that it shall be lawful for the Governor either before or after the accounts have been examined by any such person or persons to refer such accounts or any part thereof to one of the Judges of the Supreme Court or to a Registrar thereof who are hereby authorized and required to examine and report upon the same for the information of the Governor.

Curator to pass his accounts before person appointed by Governor.

XXI. Where any person shall be entitled to receive any money out of the fund standing to the credit of any estate administered by any Curator the Curator appointed to administer shall certify to an account in favor of such person upon the person so claiming subscribing a declaration that such account is true and just in every particular and that the estate upon which such claim is made is legally liable to satisfy such claim and thereupon the Colonial Treasurer shall forthwith satisfy such claim to the extent of the fund standing to the credit of the estate upon which such claim is made.

Manner in which claimants on estates are to be paid.

XXII. Such declaration shall be in the form prescribed by the fourth Schedule hereto annexed and if any person shall make and subscribe any declaration required by this Act to be made or subscribed knowing the same to be false he shall incur the same penalties as are or may be provided against persons convicted of wilful or corrupt perjury.

Declaration to be in form in Schedule fourth. False declaration punishable as perjury.

XXIII. Provided that it shall be lawful for the Supreme Court or any Judge thereof on the application of any such claimant by rule or order to dispense with such declaration and to admit other evidence by affidavit of the claimant's title in lieu thereof And such rule or

Other evidence instead of declaration may by order of Court or Judge be admitted.

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order and affidavit made in compliance with such rule or order shall be acted upon by every Curator in lieu of such declaration.

Estate of persons dying insolvent.

XXIV. In the case of any estate comprised in any such rule or order appearing to the Curator to be insufficient for the payment of the debts appearing to be due from the same it shall be lawful for the Curator to apply to any Judge of the Supreme Court upon affidavit of the circumstances And it shall be lawful for any such Judge if he shall think fit upon any such application to direct the proceeds of the estate comprised in such application to be applied in part payment of all such debts rateably and in proportion to their respective amounts And such Judge by order shall from time to time fix the rate or proportion payable and on such order being made the Curator shall make the certificate hereinbefore required to be made.

Probates and administrations may be granted notwithstanding appointment of Curator.

XXV. Notwithstanding any rule or order which shall have been made authorizing the Curator to administer under this Act the Supreme Court may grant probate of the will or letters of administration of the estate of such deceased person to any person or persons entitled thereto in such manner and subject to such limitations or conditions as such Court shall think proper but no application for any such grant shall be made after any such rule or order as aforesaid has been made until seven days after notice in writing of the intention to apply for the same shall have been left at the office of the Curator appointed by such rule or order.

On such grant Curator's liabilities to cease.

XXVI. Immediately on the grant of any such probate or letters of administration all the powers rights and duties of the Curator (except such rights as are conferred by this section) in regard to the estate of the deceased person whose estate shall be affected by such grant and all liabilities of any Curator under any contract or agreement entered into by any Curator in relation to such estate or any part thereof shall cease and (subject to and on the allowance and payment to the Curator of all money due for commission and necessary outlay disbursements costs charges and expenses in relation to such estate including all costs of appearing on the application for such probate or letters of administration and consequent thereon and subject also to the provisions of this section) such portion of the estate of such deceased person as shall be left unadministered by such Curator shall vest in the executor or administrator obtaining such grant of probate or letters of administration.

Curator to manage real estate of absentee heir or devisee.

XXVII. All real estate and all rents income and proceeds arising therefrom accruing or which may have accrued to any heir-at-law or devisee who may be or may have been absent from the Colony at the time of the death of the person from whom such real estate is or was immediately derived may until such heir-at-law or devisee shall duly establish his right and title to the possession of such estate to the satisfaction of the Supreme Court of New Zealand sitting in the judicial district in which such real estate is situate or unless such heir-at-law or devisee shall have already taken possession of such estate be taken possession of managed and received by the Curator appointed to act for the Province within which such real estate is situate.

Powers of Curators in relation to such real estate.

XXVIII. For the purposes of this Act and subject to the provisions thereof every Curator managing or taking possession of such real estate or the income or proceeds thereof shall have and may exercise the same rights and powers as the heir or devisee if he were present.

Purposes for which Curator may expend money about real estate.

XXIX. Out of the rents and proceeds received by any Curator under this Act in respect of any land messuages and real estate so taken possession of or managed by any Curator the Curator may expend money for the following purposes with respect to the land messuages and real estate from whence the same arise that is to say—

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May keep any buildings and fences in good repair and may maintain the same with their appurtenances in good order and condition

May erect any such fence as the owner or occupier of such land is by law required to make

May cut and gather such crops as may be growing thereon at the time of the testator's decease

May insure any buildings thereon from loss by fire

May pay any rates by law due and payable

May contribute towards the formation of any road footway or improvement projected under the authority of any law by which the Government or any Municipal or Provincial Body make any contribution

With the sanction of a Judge of the Supreme Court sitting in the judicial district within which such real estate is situate previously obtained the Curator may do any other act necessary or desirable for the preservation maintenance or improvement of the land with its buildings and appurtenances.

XXX. The Curator may from time to time let all or any part of such messuages and land with the appurtenances and for such consideration to such person for such period not exceeding a tenancy from year to year and subject to such rent covenants and conditions as he shall think fit.

XXXI. All rents and other moneys received by any Curator who has taken possession of or is managing any such real estate shall after the deduction of such moneys as may be expended under the powers hereinbefore contained be by him paid at such intervals as the Governor shall from time to time direct into the Colonial Treasury to an account to be called "Real Estate Administration Account: Estate of A. B." stating the name of the deceased Provided that after the payment as aforesaid of the said rents and moneys into the Colonial Treasury it shall be lawful for any Judge of the Supreme Court sitting in the judicial district in which the property dealt with is situate from time to time to order that such rents and moneys or any part thereof shall be paid to the Curator to be applied by him to any of the purposes hereinbefore mentioned and upon the production of any such order the Colonial Treasurer shall pay the money therein specified to the Curator.

XXXII. Upon the establishment of the right or title of the heir-at-law or devisee as hereinbefore mentioned the Supreme Court sitting within the judicial district in which such real estate is situate shall make an order for the payment to him by the Colonial Treasurer of the money in the Colonial Treasury to which he is entitled and upon the production of such order the Colonial Treasurer shall pay such money to such heir-at-law or devisee.

XXXIII. Every Curator shall as to the real estate of each deceased person whose real estate he shall have so entered upon or managed make up for examination and audit annually an account stating therein in detail the gross receipts and the sums expended under the powers of this Act in that behalf contained with explanatory particulars of each item and such account shall be examined by a Judge of the Supreme Court sitting in the judicial district in which the real estate dealt with is situate and allowed by him as correct if he shall be satisfied therewith and shall be delivered to the Colonial Treasurer and by him be published in the *New Zealand Gazette* provided that if the right and title of the heir-at-law or devisee be established as aforesaid before the expiration of any such year the said account shall be made up to the date of such establishment and shall be examined delivered and published as aforesaid.

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Possession of land to be given to heir or devisee.

XXXIV. On the establishment by the heir-at-law or devisee of such right or title as aforesaid possession of the land with the appurtenances shall be immediately delivered by the Curator to such heir-at-law or devisee.

Curator to receive percentage for management of real estate.

XXXV. Every Curator shall be allowed by the Judge in passing the account of rents and profits of any real estate managed by him five pounds per centum on the gross receipts and expenditure being an allowance to the Curator for the performance of his duties under this Act in regard to such real estate as aforesaid.

Governor in Council to make orders regulating business of Curators.

XXXVI. The Governor in Council may from time to time make such general rules and orders touching and concerning the safe custody of moneys the receipt and payment of money by Curators the time place and manner of account the method of keeping the Curator's accounts the inspection and audit thereof and generally touching the conduct of the Curator's business and of all proceedings under this Act and the conduct and despatch of all business matters and things to be done in pursuance hereof and generally for carrying the several provisions of this Act into effect as may be deemed expedient and from time to time repeal vary or amend as occasion may require such rules and orders or any of them and every such rule and order shall take effect from a day to be therein named for that purpose Provided that no such rule or order be repugnant to or inconsistent with any of the provisions of this Act.

Curator to sue and be sued as administrator.

XXXVII. In all proceedings at law or in equity by or against the Curator in respect of estate of which he may have been appointed to administer he shall sue and be sued and described in like manner as if letters of administration of the estate in respect of which he shall so sue or be sued had been granted to him in due course of law and it shall not be necessary to state or prove his appointment as Curator but it shall be sufficient for that purpose to prove the rule or order hereinbefore mentioned.

Appointment of deputy.

XXXVIII. During the illness or absence of any Curator it shall be lawful for the Governor in Council to appoint some fit person approved of by the Curator to act as deputy to discharge the duties of such Curator and it shall be lawful for the person so appointed during such illness or absence to act in the stead of the Curator and to sign and execute in his name all such documents as may require his signature or execution and to do perform and discharge all other acts deeds and duties pertaining to the office of Curator.

Curator not to be liable to action or suit without leave of the Court.

XXXIX. No Curator either before or after the grant to any other person of any probate or letters of administration and no Curator who shall have taken possession of or managed any real estate under the provisions of this Act shall be liable to be sued or proceeded against in any action or suit for anything done or omitted in his office or in the intended execution of his duty unless such action or suit shall be sanctioned by the Supreme Court or a Judge thereof after a rule *nisi* or summons to show cause.

Curators and deputy to give security.

XL. Every person appointed Curator shall forthwith provide security for such sum not being less than two thousand pounds and in such manner and form as the Governor in Council shall from time to time direct for the due performance of the duties of his office and for the due accounting for and payment of all moneys which shall come to the possession or be under the control of himself or his agents by reason of or by virtue of his or their office or employment and before any person shall be appointed to act as the deputy of the Curator as herein provided both the Curator and such deputy shall be in like manner required to provide security

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for the due performance by such deputy of the duties of his office and for the due accounting for and payment of all moneys which shall come to the possession or be under the control of such deputy or his agents by reason or by virtue of his or their office or employment.

XLII. All orders or other directions heretofore made by the Supreme Court or any Judge thereof directing the collection or distribution of assets of any deceased person within the Colony shall be deemed and they are hereby declared to be good and valid to all intents and purposes and all acts and proceedings of any person or persons whether acting as official administrator of intestate estates or otherwise to whom any such order or direction shall have been issued or who shall have acted under the authority of any such order or direction shall so far as any such order or direction has been obeyed be deemed good and valid and this Act shall be deemed a full and sufficient discharge and indemnity to all persons for any act matter or proceeding done or executed under and by virtue of any such order or direction and all the acts of any person before the passing of this Act acting as official administrator by virtue of any Statute or Ordinance hitherto in force in New Zealand shall be as valid and effectual as if they had been done under this Act or rule of the said Court or order of a Judge thereof made in pursuance of this Act and such person shall by virtue of this Act be entitled to the like benefits protection and indemnity in respect of all such acts as he would have been entitled to if they had been done under such rule or order.

Confirmation of acts of previous official administrators.

XLIII. Nothing in this Act shall be deemed to render any officer of Her Majesty or of the Government of New Zealand liable to any claim or demand or be deemed to give to any person any right to any compensation for any omission to apply for a rule or order to administer goods or for any omission to collect recover or convert into money the goods of any deceased person or for any omission to demand or receive or to enforce payment of any rents or profits of any real estate of any deceased person taken possession of or managed under this Act.

Limitation of liability.

XLIII. The Judges of the Supreme Court or any two of them of whom the Chief Justice shall be one may from time to time make such general rules and orders touching and concerning applications to be made to the Court or a Judge thereof under this Act and the conduct and despatch of all business matters and things to be done in relation to such application as to the said Court shall seem expedient and may from time to time repeal vary or amend as occasion may require such rules and orders or any of them and every such rule or order shall take effect from a day to be named therein for that purpose and such rules and orders shall be published in the *New Zealand Gazette* within one month from the making hereof.

Judges to make orders regulating applications.

XLIV. In this Act the term "official administrator" shall mean and apply to any person to whom by virtue of his office of Registrar or Deputy-Registrar of the Supreme Court the official administration of the estates of deceased persons shall have been granted by virtue of any rules or orders of the Supreme Court and the term "out-going official administrator" shall mean and apply to any Registrar or Deputy-Registrar or official administrator who shall by virtue of this Act cease to be official administrator.

To whom the terms official administrator and out-going official administrator shall apply.

XLV. Immediately upon this Act coming into operation in any judicial district Province or place every Registrar and Deputy-Registrar in such judicial district Province or place shall cease to be an official administrator And all the goods chattels moneys and estates whatsoever vested in every such Registrar or Deputy-Registrar and in every such out-going official administrator shall thereupon cease to be vested

Registrar to cease to be official administrator.

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in or belong to such out-going official administrator and shall vest in the person who shall be appointed Curator for the same Province or if such Registrar shall have acted as official administrator for more Provinces than one then in the person who shall be appointed Curator for the Province in which is situate the office of the out-going official administrator or in which such deceased person shall have died And in this Act the term "in-coming Curator" shall mean and apply to the person so appointed and in whom such estate shall by virtue of this Act be vested.

Goods and chattels considered the property of in-coming Curator.

XLVI. In every such case all such goods chattels moneys and estate may be sued for and recovered as the proper goods chattels moneys and estate of such in-coming Curator and all rights of action duties powers and liabilities whatsoever (except as hereinafter provided) of the out-going official administrator shall devolve upon vest in and be exercised by the in-coming Curator as effectually as if such in-coming Curator had been the original official administrator.

Saving of liabilities.

XLVII. Provided that nothing herein contained shall in any way release or discharge any out-going official administrator or his sureties from liability in respect of acts done or suffered during his official administration or render any in-coming Curator or his sureties liable in respect of any such acts.

Out-going official administrator to deliver over books moneys &c. to the in-coming Curator.

XLVIII. Every out-going official administrator and the executors of any deceased official administrator shall within one week or such other time as the Supreme Court or a Judge thereof shall by any rule or order from time to time prescribe and which rule or order such Court or Judge is hereby empowered to make after application in writing for that purpose shall have been delivered personally to or left at the last or most recent place or places of residence of such out-going official administrator or of the executors of a deceased official administrator or sent by post addressed to him or them at such place or places of residence pay and deliver over to the in-coming Curator or to some person or persons to be appointed in that behalf by such in-coming Curator all books papers and documents and all moneys goods chattels estate and effects whatsoever in any way belonging to the respective estates of such deceased persons as aforesaid which may actually be or which ought to be in the custody power or control of such out-going official administrator or of the executors of a deceased official administrator and shall also render full and exact statements and accounts in writing of all moneys received and paid on account of such estates respectively and of all matters and things whatsoever relating to the administration of such estates respectively.

Penalty.

XLIX. If such out-going official administrator or the executor of any deceased out-going official administrator shall without reasonable cause shown fail within such period as aforesaid to make such payment or delivery over as aforesaid or to render such statements or accounts as aforesaid or shall in respect of any such matters be knowingly guilty of any wilful mis-statement omission or suppression of facts he shall be deemed to be guilty of a misdemeanor and punishable accordingly.

The executors of an out-going official administrator to be liable only to the extent of the estate.

L. Provided that no executor of a deceased out-going official administrator shall be liable except so far as the estate and effects of such deceased out-going official administrator shall extend and the answer or plea of *plene administravit* shall be a sufficient answer or plea to any action suit claim or demand under this Act against any such executor.

Saving of liabilities.

LI. Provided also that no person shall be answerable or accountable under this Act for any money goods chattels estate or effects except

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such as shall actually come to his hands or possession and one person shall not be answerable for another person or the acts deeds receipts neglects or defaults of another person but each person shall be answerable only for his own acts deeds receipts neglects and defaults and no person shall be answerable for any banker broker or other person with whom any moneys goods chattels estate or effects shall be or shall have been lodged for safe custody nor for any involuntary loss or damage which may happen to the estate of any deceased person unless such loss or damage shall happen through his wilful neglect or default.

LIII. If any out-going official administrator or the executor of any deceased official administrator shall wilfully neglect or refuse to deliver up any books papers accounts moneys goods chattels or effects after such application as aforesaid agreeably to the provisions of this Act and if there shall be reasonable ground to suspect that the same or any of them are knowingly and wilfully retained and kept in any house or building it shall be lawful for any Resident Magistrate or for any two Justices of the Peace upon proof thereof upon oath to his or their satisfaction by warrant under his or their hand or hands to authorize some person or persons named therein in the daytime to enter into any such house or building and there to make search for any such books papers accounts goods chattels and effects and the same being then and there found to take and carry away and the same together with the person in whose custody power or possession the same shall be found to bring before such Resident Magistrate or such Justices as aforesaid to be dealt with according to law.

Power to search for books &c.

LIII. Any incoming Curator and any person claiming an interest in the estate of any deceased person may (subject to such rules as shall from time to time be made in that behalf by the Supreme Court) at any time and from time to time with or without notice apply to the Supreme Court or any Judge thereof upon motion or summons as the case may be for a rule or order against an out-going official administrator or the executors of a deceased official administrator for the payment of moneys delivery of books papers accounts goods chattels or effects for the rendering of accounts for the payment of costs of proceedings under this Act or in respect of any other matter touching the due administration of the estate of a deceased person or anything relating thereto and the said Court or Judge may thereupon make such rule or order either *nisi* or absolute as to it shall seem fit against such out-going official administrator or the executors of such deceased official administrator for the payment of moneys delivery of books papers accounts goods chattels or estates rendering of accounts and payment of costs of proceedings under this Act to such person or persons within such time or times and subject to such terms and conditions as to the Court or Judge shall seem fit and generally to make such order in the premises as to it shall seem fit and every such rule or order shall be enforced as a rule of the Supreme Court in a matter pending before it.

In-coming Curator may move for an order for delivery of goods and chattels &c.

LIV. This Act shall have retrospective operation and shall be construed as applying to all persons who may have been at any time heretofore official administrators and to the executors of deceased official administrators as effectually as if retrospective words had been used throughout this Act except where the sense shall otherwise require it.

Act to have retrospective operation.

LV. In case of the decease of any person and before probate of the will or administration to the estate and effects of such person has been granted or in case it shall at any time be made to appear by affidavit or otherwise to any Curator that there are grounds for believing that any person is dead if in either of the above cases it shall be made

Curator may take charge of property of deceased before administration granted.

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to appear by affidavit or otherwise to the satisfaction of a Curator that any goods chattels or effects of such person deceased or believed to be deceased situated and being within the district in which such Curator is acting are about to be or that there is any reasonable probability that the same will be wasted destroyed removed sold or otherwise disposed of to the prejudice of any person having an interest therein it shall be lawful for such Curator to cause possession and care to be taken of such goods chattels and effects by some person on behalf of the parties interested subject to the orders of the Supreme Court or a Judge thereof in respect of the same unless some person being in possession of such goods chattels and effects or claiming an interest therein shall give to such Curator security to his satisfaction that such person will not waste destroy remove sell or otherwise dispose thereof until probate of the will or letters of administration to the estate and effects of the deceased shall have been granted or other order shall have been made by the Supreme Court relating thereto and if afterwards administration shall be granted to a Curator such Curator may retain out of the proceeds of the estate and effects along with other lawful costs and charges the expenses of the custody and taking care of such estate and effects to be allowed by a Judge of the Supreme Court under his hand and if the Court or a Judge shall grant administration to any other person than such Curator or shall grant probate of the will of the deceased it shall be lawful for such Court or Judge to make such grant subject to the payment by the person to whom it shall be made of the expenses aforesaid allowed as aforesaid And if the person believed to be dead shall afterwards appear and establish his claim to such goods chattels and effects the Court or Judge may order the same to be delivered to such person subject to and on payment of the expenses allowed as aforesaid.

Commencement of Act.

LVI. This Act shall come into force in each Province of the Colony respectively on such day as the Governor may fix by proclamation in the *New Zealand Gazette*.

SCHEDULES.

THE FIRST SCHEDULE.

Rule of Court.

In the Supreme Court of New Zealand District.

The day of A.D. 18
UPON reading the affidavits of A. B. C. D. and E. F. it is ordered that G. H. a Curator of the Estates of Deceased Persons shall be administrator of all and singular the goods chattels and credits of O. P. deceased (with the will of the said O. P. annexed) and that this rule be published in the newspaper as "The Intestate Estate Act 1865" directs.

By the Court.

Order of Judge.

In the Supreme Court of New Zealand District.

UPON reading the affidavits of A. B. C. D. and E. F. I do order that G. H. a Curator of the Estates of Deceased Persons shall be administrator of all and singular the goods chattels and credits of O. P. deceased (with the will of the said O. P. annexed) and that this order be published in the newspaper as "The Intestate Estate Act 1865" directs.

R. S.

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THE SECOND SCHEDULE.

STATEMENT of Moneys paid by me to the Colonial Treasurer (or Sub-Treasurer at) to be carried to the credit of "The Intestate Estate Fund" and of the particular Estate in the administration of which the same were received.

| Date. | Name of Estate in which collections made. | Amount. | Total. |
|-------|---|---------|--------|
| | | | |

I do solemnly and sincerely declare that the above Statement of Moneys includes all moneys received by me or coming into my control between the day of and the day of on account of any Estate of which I am administrator by virtue of my office as Curator.

Curator.

THE THIRD SCHEDULE.

PARTICULARS of the Estates of Deceased Persons which have been placed under the charge of Curator of the Estates of Deceased Persons The management during the month of

| No. | Name of Deceased. | Colonial residence. | Supposed British or Foreign residence. | Date of rule or order. | Value or estimated value of personal estate. | Time of Deceased's death. | Remarks. |
|-----|-------------------|---------------------|--|------------------------|--|---------------------------|----------|
| | | | | | | | |

Dated the day of

Curator.

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THE FOURTH SCHEDULE.

The Estate of

Dr. to A. B.

| Date. | Estate. | Nature and full particulars of claim.* | Amount. | | |
|-------|---------|--|---------|--|--|
| | | | | | |

I, A. B. being a claimant as above stated do solemnly and sincerely declare that the particulars above given of the claim made by me are true and just in every particular and that I believe the abovenamed Estate to be legally liable to satisfy such claim.

A. B.

* If claimant is entitled as next of kin his relationship to the deceased must be fully stated.