

New Zealand.



FAMILY PROTECTION.

1908, No. 60.

AN ACT to consolidate certain Enactments of the General Assembly relating to the Protection of Family Homes and the Maintenance of Families.

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

Short Title.

1. (1.) The Short Title of this Act is "The Family Protection Act, 1908."

Enactments consolidated.

(2.) This Act is a consolidation of the enactments mentioned in the Schedule hereto, and with respect to those enactments the following provisions shall apply:—

Savings.

(a.) All settlements and family homes, all regulations, orders, certificates, caveats, and generally all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(b.) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

(3.) This Act is divided into Parts, as follows:—

PART I.—Family Homes Protection. (Sections 3 to 31.)

PART II.—Testator's Family Maintenance. (Sections 32 to 36.)

2. In this Act, if not inconsistent with the context,—

"Family" includes the wife and children, or the husband and children, of the settlor:

"Family home" means a family home registered under this Act:

Interpretation.
1895, No. 20, sec. 2

- “ Prescribed ” means prescribed by regulations made under this Act :
- “ Registrar ” means the District Land Registrar of the land registration district in which is situate the land to be settled under this Act :
- “ Settlor ” means any person on whose application a family home is registered.

PART I.

FAMILY HOMES PROTECTION.

3. (1.) Any owner of land, whether freehold or leasehold, on which he resides and has his home may settle such land, not exceeding (with all improvements) one thousand five hundred pounds in value, as a family home subject to the provisions of this Act. Who may settle land as a family home. 1895, No. 20, sec. 3
- (2.) Such value shall, on the application of the owner and on payment of the prescribed fee, be ascertained by the Valuer-General, who shall give a certificate under his hand setting forth the area and boundaries of the land, and the value as ascertained by him ; and such certificate shall for the purposes of this Act be conclusive evidence of the matters therein set forth as aforesaid.
4. No person shall settle any land as a family home unless the land is unencumbered and he is able to pay all his debts without the aid of the land proposed to be so settled. Restrictions. Ibid, sec. 4
5. Any person desirous of settling any land as a family home shall make application in the prescribed manner to the Registrar to register the same under this Act. Application. Ibid, sec. 5
6. On receipt of the application the Registrar shall give notice thereof in the prescribed manner. Notice of application. Ibid, sec. 6
7. Any person claiming to be a creditor of the applicant, or claiming any estate or interest in the land, may, within twelve months after the date of the first publication of such notice, lodge with the Registrar a caveat, in the prescribed manner and form, forbidding the granting of the application. Caveat may lodge. Ibid, sec. 7
8. On the receipt of any caveat within the time limited therefor the Registrar shall cause notice thereof, in the prescribed manner and form, to be served on the applicant, and shall not proceed further with the application until the caveat is withdrawn or removed. Notice of caveat to applicant. Ibid, sec. 8
9. Any caveat may be withdrawn by the caveator by notice in the prescribed form. Caveat may be withdrawn. Ibid, sec. 9
10. Where a caveat has been lodged, the applicant may withdraw his application by notice in the prescribed form, or may summon the caveator to attend before the Supreme Court or a Judge thereof to show cause why the caveat should not be removed. Applicant to summon caveator before Court. Ibid, sec. 10
11. Upon the hearing of such summons, and on proof of the service thereof, the Court or Judge may make such order in the premises, either *ex parte* or otherwise, as to the Court or Judge seems meet. Hearing of summons. Ibid, sec. 11
12. In and by such order the Court or Judge may direct the caveat to be removed as to part of the land comprised in the application, and the applicant may thereupon amend his application in terms of the order. Caveat may be removed as to part of land. Ibid, sec. 12

Caveator must be summoned within one month.
1895, No. 20, sec. 13

Condition for removal of caveat.
Ibid, sec. 14

Registrar to issue Family Home Certificate.
Ibid, sec. 15

Registration thereof.

Deposit of certificate.
Ibid, sec. 16
Effect of registration.
Ibid, sec. 17

Home not relieved from being taken compulsorily.
Ibid, sec. 18

13. If for the space of one month after receipt of notice of the lodging of a caveat, or such extended time as the Judge on summary application may direct, the applicant fails or neglects to summon the caveator as hereinbefore provided, the application shall be deemed to have lapsed, and the Registrar shall proceed no further therewith.

14. No order shall be made for the removal of a caveat unless the applicant satisfies the Court or Judge that he can pay and discharge his debts and liabilities without recourse to the land proposed to be settled.

15. If no caveat is lodged within the time limited therefor, or if all caveats so lodged have been withdrawn or removed, then, on the expiration of such time, and on such withdrawal or removal being duly made, the Registrar shall issue a Family Home Certificate in the prescribed form under his hand and official seal, to the effect that the land comprised in such application or amended application is entitled to be registered as a family home under this Act, and shall forthwith proceed to register the same in manner following, that is to say:—

(a.) As to such part of the land as is subject to the provisions of "The Deeds Registration Act, 1908," by registering the certificate in like manner as deeds affecting the land are registrable under that Act.

(b.) As to such part of the land as is subject to the provisions of "The Land Transfer Act, 1908," by recording in the register, and on the certificate of title or Crown grant of the land, the following memorandum: "Settled as a family home under 'The Family Protection Act, 1908,' by _____, of _____, as settlor," in like manner as the registration of instruments is effected.

16. The Registrar shall deposit, under "The Land Transfer Act, 1908," every certificate as soon as it is registered.

17. The effect of such registration shall be to settle the land in manner following:—

(a.) For the personal use and occupation of the settlor and his family until the period for distribution hereinafter mentioned:

(b.) For distribution at the period for distribution amongst the family of the settlor then living, or, if he has no family, then amongst those who would be entitled in case of his intestacy if the land were not subject to this Act:

(c.) So that no alienation or dealing, or attempted alienation or dealing, by the settlor or his family shall have any force or effect, except as provided in sections twenty-one and twenty-two hereof:

(d.) So that the estate and interest of the settlor and his family shall, subject to the provisions hereinafter contained, continue personal, absolute, indefeasible, and unaffected, notwithstanding any bankruptcy, assignment, judgment, order, charge, execution, dealing, matter, or thing which but for this Act could directly or indirectly have affected any estate or interest in the land.

18. Nothing in this Act shall operate to prevent the family home, or any part thereof, from being taken compulsorily under any Act providing for the compulsory taking of land.

19. Nothing in this Act shall operate to relieve the family home from any liability which, if this Act had not been passed, would from time to time attach thereto in respect of—

Home not relieved from liability.
1895, No. 20, sec. 19

- (a.) The erection and maintenance of boundary-fences under any Act for the time being in force; or
- (b.) Burdens and obligations imposed on the family home under any Act for the time being in force relating to drainage or water-supply; or
- (c.) The payment of rates, taxes, and burdens levied or imposed for the time being on the family home under any Act, or authorised to be so levied or imposed by any local authority or other body; or
- (d.) Liens on the family home under "The Wages Protection and Contractors' Liens Act, 1908":

Provided that no sale of such family home shall take place unless and until execution against the goods and other lands of the person primarily liable has been returned unsatisfied.

20. The period for distribution of a family home shall be the date of the death of the settlor, or the time when all the children of the settlor have attained the age of twenty-one years, or died under that age, whichever event last happens.

Period for distribution.
Ibid, sec. 20

21. (1.) The settlor during his lifetime may regulate the occupation of the family home by himself and his family as he thinks fit.

Regulation of occupation.
Ibid, sec. 21

(2.) After his death such occupation shall be regulated pursuant to any direction contained in his will.

(3.) So far as no such direction extends, or in case of the intestacy of the settlor, the widow or husband of the deceased settlor shall while living regulate such occupation, and after the death of such widow or husband all the children of the settlor shall, subject to any direction given pursuant to this section, be equally entitled to occupation of the family home.

22. (1.) The settlor, by direction contained in his will, may regulate the distribution of the family home pursuant to paragraph (b) of section seventeen hereof in such manner as he thinks fit, and may include in the benefit of such distribution the children of any child of his who dies prior to the date of the period for distribution; but, subject to any such direction, the widow or surviving husband of a deceased settlor shall take one-third, and the children then living shall equally between them take the residue, or, if there is no widow or surviving husband, the whole family home.

Regulation of distribution.
Ibid, sec. 22

(2.) If at the period for distribution no child or grandchild of the settlor takes any share or interest in the family home, then the widow or surviving husband shall take the whole.

23. Any regulation of occupation or distribution provided for by either of the two last preceding sections may exclude from participation any person who, but for such regulation, would be entitled to share therein:

Exclusion from participation.
Ibid, sec. 23

Provided that no regulation shall give any right, estate, or interest to any person not included in either of those sections.

24. The registration of a family home shall be rescinded by operation of law,—

Rescission of registration.
Ibid, sec. 24

- (a.) If within twelve months after the date of the registration the settlor becomes bankrupt, or makes any assignment for the benefit of his creditors; or

(b.) If the settlor dies within twelve months after the date of the registration, and his estate is insufficient for the payment and discharge of his debts and liabilities without recourse to the family home.

Cesser of registration.
1895, No. 20, sec. 25

25. The registration of a family home shall cease to operate after the period for distribution, except for the purpose of giving effect to estates or interests acquired by virtue of the regulation of occupation or distribution, or otherwise according to law.

Memorial of rescission or cesser to be registered.
Ibid, sec. 26

26. On the registration of a family home being rescinded by operation of law, or on such registration ceasing to operate, the Registrar shall, in the prescribed manner and form, duly register a memorial of such rescission or cesser.

Family homes may be continued.
Ibid, sec. 27

27. (1.) By the consent in the prescribed manner of all the parties entitled in distribution, the land may be continued as a family home, provided notice thereof in the prescribed manner and form is duly given to the Registrar, who shall in the prescribed manner and form duly register a memorial of such continuance.

(2.) Such registration shall have the effect of continuing the land as a family home under this Act, and the persons consenting thereto shall be deemed settlors.

Fees.
Ibid, sec. 28

28. There shall be payable in respect of the various matters provided for in this Act such fees as the Governor in Council from time to time prescribes.

Regulations.
Ibid, sec. 29

29. The Governor may from time to time, by Order in Council gazetted, make regulations for carrying into effect the provisions of this Act relating to family homes, and prescribing the forms, modes, and times of applications, notices, certificates, memorials, entries, and all other proceedings required for carrying out the intention of this Act.

Stamp duty not payable on transmission of share in family home.
Ibid, sec. 30

30. No duty under "The Stamp Duties Act, 1908," or under "The Death Duties Act, 1908," shall be payable in respect of any settlement under this Part of this Act, or in respect of the transmission of any share or interest in the settled land to any member of the family, so long as the family home continues to be registered.

The Settled Land Act to apply.
Ibid, sec. 31

31. The provisions of "The Settled Land Act, 1908," shall, *mutatis mutandis*, apply to every family home.

PART II.

TESTATOR'S FAMILY MAINTENANCE.

Interpretation.
1906, No. 59, sec. 2

32. In this Part of this Act "Court" means the Supreme Court or any Judge thereof, and in the case of deceased Maoris means the Native Land Court.

Testator's estate liable for maintenance of wife, husband, or children.
Ibid, sec. 3

33. (1.) If any person (hereinafter called "the testator") 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 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 favour of any person whose

character or conduct 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 or a periodical or other payment.

(4.) The incidence of the payment or payments ordered shall, unless the Court otherwise determines, fall rateably 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 Zealand.

(5.) The Court shall have power to 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.

(6.) 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 in which he is interested, 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.

(7.) 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 to be, an application on behalf of all persons who might apply.

(8.) Upon any order being made under this Part of this Act the portion of the estate comprised therein or affected thereby shall be held subject to the provisions of the order.

(9.) 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 Zealand of probate of the will:

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, and this power shall extend to cases where the time for applying has already expired, including cases where it expired before the coming into operation of this Act:

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

(10.) 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 for the purpose of avoiding the effect of limitation.

(11.) The application by an executor, when made on behalf of a 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.

(12.) 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.

(13.) 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 its order has become possessed of or entitled to provisions for his 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.

34. (1.) Where an order is made by the Court under this Part of this Act, all duties payable on the transmission of the estate under the will of the testator shall be computed as if the provisions of the order had been part of the will.

(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 Minister of Stamp Duties to the person entitled to receive the same.

35. From any order made under this Part of this Act a party prejudicially affected may appeal to the Court of Appeal, and may apply to the Court or a Judge for directions as to who is to be served with notice of such appeal.

36. Any application made under any Act repealed by "The Testator's Family Maintenance Act, 1906," which has not on the coming into operation of this Act been decided by the Court may be heard and determined under this Part of this Act.

SCHEDULE.

ENACTMENTS CONSOLIDATED.

1895, No. 20.—"The Family Homes Protection Act, 1895."

1906, No. 59.—"The Testator's Family Maintenance Act, 1906."

Duty on estate,
how computed.
1906, No. 59, sec. 4

Refund of duty
paid in excess.

Right of appeal.
Ibid, sec. 5

Saving of pending
applications.
Ibid, sec. 6