

**Reprint
as at 25 October 1945**



**Marianne Caughey Preston Estate
Act 1945**

Private Act 1945 No 3
Date of assent 24 October 1945
Commencement 24 October 1945

Contents

	Page
Title	2
Preamble	2
1 Short Title	6
2 Interpretation	6
3 Variation of terms of bequest	6
4 Authority for payment by trustees	7
5 Source of payment of sum to be paid	7
6 Payment to be unconditional	7
7 Succession duties to be paid by Reginald Caughey Seymour Smith	7
8 Provision in case of death of beneficiary	7
9 Authority for use of name	7
10 Private Act	7

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

An Act to vary the terms of the will of the late Marianne Caughey Preston, of Auckland, married woman, by increasing the provision therein made for one Reginald Caughey Seymour Smith

Preamble

Whereas Reginald Caughey Seymour Smith, of Auckland, shop-assistant, having been born in the United Kingdom of Great Britain and Ireland, came to New Zealand on or about 9 March 1909 as an infant in arms in the charge of Marianne Caughey Preston (then Marianne Caughey Smith), above described, and her husband, William Henry Smith, of Auckland, draper:

And whereas from thence onwards the said Reginald Caughey Seymour Smith was brought up in the household of the said William Henry Smith and his said wife as if he had been their son:

And whereas the said Reginald Caughey Seymour Smith was not at any time legally adopted by the said William Henry Smith and/or his said wife either in the United Kingdom of Great Britain and Northern Ireland or in New Zealand:

And whereas by a certain last will and testament of the said William Henry Smith dated 24 December 1909 it was provided that in case the said Marianne Caughey Smith survived the said William Henry Smith the said Marianne Caughey Smith should take the whole of his estate, but in case the said Marianne Caughey Smith did not so survive the said William Henry Smith a bequest was made to the said Reginald Caughey Seymour Smith of 10 000 fully-paid one-pound shares of and in Smith and Caughey, Limited, if and when he attained the age of 25 years, such bequest being of a value of not less than 10,000 pounds:

And whereas the said William Henry Smith died at Auckland on or about 31 August 1912 (the said Reginald Caughey Seymour Smith being then of the age of 5 or thereabouts), having previously revoked his said will and testament by a subsequent last will and testament dated 22 August 1912, by which he gave all his property to his said wife:

And whereas at divers times subsequent to the death of the said William Henry Smith and before her last will and testament dated 15 February 1934 the said Marianne Caughey Smith executed several wills and testamentary documents wherein provision was made for the said Reginald Caughey Seymour Smith as follows:

- (a) by will dated 21 May 1917, 15 000 fully-paid-up shares in Smith and Caughey, Limited, were directed to be transferred to him the said Reginald Caughey Seymour Smith on his attaining the age of 25 years or previously marrying an approved person, with power (*inter alia*) to the trustees to pay to him the income meanwhile:
- (b) by will dated 10 November 1920, 15 000 fully-paid shares in Smith and Caughey, Limited, were left upon the same trusts as in the will of 21 May 1917:
- (c) by codicil dated 6 February 1924, the gift of shares in Smith and Caughey, Limited, was revoked, and in lieu thereof 15,000 pounds in cash was directed to be set apart and the income applied to the maintenance and benefit of him the said Reginald Caughey Seymour Smith during his life at the discretion, however, of the trustees, with a proviso empowering the trustees at any time after he attained the age of 25 years if he should have led an upright, diligent, and satisfactory life to pay to him the whole of such sum of 15,000 pounds or some part thereof as the trustees might think fit, the balance, if any, to form part of the residuary estate:
- (d) by will dated 10 August 1927, no provision of any kind was made for him the said Reginald Caughey Seymour Smith:
- (e) by will dated 19 April 1929, the sum of 100 pounds was directed to be set apart, with a discretionary power to apply the income therefrom for the benefit of him the said Reginald Caughey Seymour Smith during his life, with power also to the trustees to pay the said sum of 100 pounds or such part of such sum of 100 pounds as the trustees should in their discretion decide to him after attaining the age of 25 years if he had led an upright, diligent, and satisfactory life:

- (f) by will dated 12 November 1929, the conditional provision of 100 pounds made in the will of 19 April 1929 is repeated:
- (g) by codicil dated 10 November 1930, all provision for him the said Reginald Caughey Seymour Smith is revoked:
- (h) by will dated 28 November 1931, the conditional provision of 100 pounds made in the will of 19 April 1929 is repeated:
- (i) by will dated 12 September 1932, the conditional provision of 100 pounds made in the will of 19 April 1929 is repeated:

And whereas on 12 September 1932, the said Marianne Caughey Smith was married to one Raymond Preston, of Auckland, minister of religion:

And whereas by her last will and testament dated 15 February 1934, the said Marianne Caughey Preston directed that the sum of 100 pounds should be set apart by her trustees upon trust to pay the income therefrom for the maintenance, benefit, and advancement of the said Reginald Caughey Seymour Smith during his life, provided that when he attained the age of 25 years if the then surviving trustees should certify in writing that his life had been from her death upright, diligent, and satisfactory, then the said trustees should have power to pay to him the said Reginald Caughey Seymour Smith the whole of the said sum of 100 pounds or such part thereof as they might think fit, and no other provision was made for the said Reginald Caughey Seymour Smith:

And whereas the said Reginald Caughey Seymour Smith is now of the age of almost 37 years:

And whereas on 1 September 1939, the trustees of the said will certified in writing under their hands that the said Reginald Caughey Seymour Smith was then over the age of 25 years, and that since the death of the said Marianne Caughey Preston his life had been upright, diligent, and satisfactory, and thereupon paid over to him the said sum of 100 pounds pursuant to the powers given to them by the said will:

And whereas the said Marianne Caughey Preston died at Auckland on 1 September 1938, without having revoked the

aforementioned provisions of her said will and testament, whereof probate was granted out of the Supreme Court of New Zealand at Auckland on 28 October 1938 to John Alexander, of Auckland aforesaid, Solicitor; Samuel Little Barry, of Auckland, company secretary; Albert Bygrave Chappell, of Auckland aforesaid, minister of religion; and William James Mains, of Auckland aforesaid, warehouseman:

And whereas the value of the estate of the said Marianne Caughey Preston was assessed by the Commissioner of Stamp Duties for the purposes of the duty payable under the Death Duties Act 1921 and its amendments at 467,793 pounds 1 shilling and 10 pence:

And whereas the balance of residuary assets in the estate is approximately 325,000 pounds:

And whereas under the terms of the said last will and testament of the said Marianne Caughey Preston the residue of her estate is held for the provision of a rest-home for aged, infirm, or impecunious women:

And whereas the amount of such residue available for such purpose other than a rest-home purchased by the trustees is approximately 312,450 pounds:

And whereas the said Reginald Caughey Seymour Smith, claiming to be the son of the said Marianne Caughey Preston, issued an originating summons under the Family Protection Act 1908, out of the Supreme Court of New Zealand at Auckland on 19 August 1943, whereby he sought an order making further and better provision for him out of the said estate:

And whereas, after hearing in the said Supreme Court, an order was made on 17 August 1944 dismissing the said summons on the grounds that the said Reginald Caughey Seymour Smith was not the son of the said Marianne Caughey Preston:

And whereas the said Supreme Court contemporaneously with the making of the said order further ordered that the trustees in the said will should be at liberty to distribute the said estate without making any provision for the said Reginald Caughey Seymour Smith:

And whereas the said Reginald Caughey Seymour Smith has represented to the said trustees that it would be just

and equitable for the said will to be varied by increasing the payment to him therein provided from 100 pounds to 15,000 pounds, but the said trustees have been advised that the granting of any such increased provision is a matter solely for the decision of the Legislature and have declined to express any opinion thereon:

And whereas in consequence of the order made by the Supreme Court as aforesaid there is no legal power or authority for the payment referred to:

And whereas such varied or increased provision cannot be made by the said trustees without Legislative authority:

And whereas the objects of this Act are not attainable otherwise than by legislation.

1 Short Title

This Act may be cited as the Marianne Caughey Preston Estate Act 1945.

2 Interpretation

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

testatrix means the said Marianne Caughey Preston

trustees means Samuel Little Barry, of Auckland, secretary, and William James Mains, of Auckland, warehouseman, the surviving trustees of the will of the testatrix, and the trustee or trustees for the time being lawfully acting as trustee or trustees of the will of the testatrix in lieu of or in addition to the said Samuel Little Barry and William James Mains, or either of them

bequest means and includes the sum of 100 pounds given and bequeathed to the said Reginald Caughey Seymour Smith by the testatrix as set out in paragraph 5, subclause 33, of her last will and testament.

3 Variation of terms of bequest

The will of the said deceased shall be deemed to be varied by increasing from 100 pounds to 15,000 pounds the bequest in favour of the said Reginald Caughey Seymour Smith, hereinbefore referred to.

4 Authority for payment by trustees

The trustees are hereby authorised to pay to the said Reginald Caughey Seymour Smith the sum of 15,000 pounds, and for so doing this Act shall be their warrant and authority.

5 Source of payment of sum to be paid

The said sum of 15,000 pounds shall be paid by the trustees out of the residue of the said estate, and, until payment, shall be deemed to be charged upon the said residue.

6 Payment to be unconditional

Payment of the said sum of 15,000 pounds shall not be subject to such conditions as are contained in the said will relating to the bequest to the said Reginald Caughey Seymour Smith or to any other conditions, and shall be made within 1 month of the passing of this Act and without interest.

7 Succession duties to be paid by Reginald Caughey Seymour Smith

All succession duties payable in respect of the said sum of 15,000 pounds shall be paid by the said Reginald Caughey Seymour Smith.

8 Provision in case of death of beneficiary

In the event of the death of the said Reginald Caughey Seymour Smith prior to payment to him of the said sum of 15,000 pounds, the said sum shall be deemed to form part of his estate and shall be payable to his executors or other legal representatives.

9 Authority for use of name

As from the date of the passing of this Act the said Reginald Caughey Seymour Smith shall be deemed to be entitled to use the name Reginald Caughey Seymour Smith as his own.

10 Private Act

This Act is hereby declared to be a private Act.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes

1 *General*

This is a reprint of the Marianne Caughey Preston Estate Act 1945. The reprint incorporates all the amendments to the Act as at 25 October 1945, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
