

Act No. 19, 1913.

An Act to constitute a public trustee; to prescribe his powers and duties; to amend the Wills, Probate and Administration Act, 1898, the Administration (Validating) Act, 1900, and the Administration Amending Act, 1906; and for purposes consequent thereon or incidental thereto. [15th October, 1913.]

PUBLIC TRUSTEE.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Public Trustee Act, 1913," and shall be construed with the Wills, Probate and Administration Act, 1898 (hereinafter called the Principal Act), the Administration (Validating) Act, 1900; and the Administration Amending Act, 1906.

Short title and commencement.

This Act shall commence on the first day of January, one thousand nine hundred and fourteen.

2. This Act is divided into Parts, as follows:—

Division of Act.

PART I.—PRELIMINARY—ss. 1-4.

PART II.—THE PUBLIC TRUSTEE—ss. 5-11.

PART III.—POWERS, DUTIES, AND IMMUNITIES OF PUBLIC TRUSTEE—ss. 12-48.

PART IV.—MISCELLANEOUS—ss. 49-60.

3. The enactments mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed:

Repeal. Schedule.

Provided that nothing in such repeal shall affect the validity of any act or thing lawfully performed or done, or the liability of any person to pay any fees or charges lawfully imposed by the curator or his

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his agents in respect of estates under administration by him at the date of the commencement of this Act, but such acts or things shall be deemed to have been performed and done, and such fees and charges imposed by the public trustee in the exercise of his powers under this Act.

Office of curator
abolished.

4. The office of curator of intestate estates is abolished, but, subject to the provisions of this Act, the former powers and duties of the curator shall be exercised and performed by the public trustee.

PART II.

THE PUBLIC TRUSTEE.

Constitution of the office.

Office of public
trustee.
N.Z. 1908, No. 159,
s. 3.

5. There shall be an office called the public trust office, administered by an officer called the public trustee, who shall be appointed by the Governor.

Deputy public
trustee.
Ibid. s. 6.

6. (1) The Governor may appoint some person to act as the deputy of the public trustee during his illness, suspension, or absence from duty.

(2) Such deputy shall, while so acting, have the powers duties and liabilities of and be entitled to the same rights and immunities as the public trustee, but his remuneration shall not exceed the amount of salary which the public trustee is receiving at the time of the appointment of such deputy.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising such deputy so to act, or as to the necessity or propriety of such appointment; and all acts or things done or omitted by such deputy shall be as valid and effectual and shall have the same consequences as if the same had been done or omitted by the public trustee.

Public trustee a
corporation sole.
N.Z. 1908, No. 159,
s. 4.

7. The public trustee is hereby constituted a corporation sole under that name, with perpetual succession and a seal of office. The appointment of the public trustee and of his deputy and their signatures, and the seal of the public trustee, shall be judicially noticed.

8.

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8. (1) The public trustee, and any deputy of the public trustee, shall give and provide security to the satisfaction of the Colonial Treasurer for the due discharge of his duties and for the due accounting for all property and all moneys and securities for money which come into his hands or under his control by virtue of his office. Security to be given.

(2) Any surety found by the public trustee, or any deputy of the public trustee, may withdraw from any future liability by giving the Colonial Treasurer three months' written notice of his desire to do so, but such withdrawal shall not affect his liability for any breach which may have occurred prior to the date of actual withdrawal.

9. (1) There shall be charged in respect of the duties of the public trustee such fees, whether by way of percentage or otherwise, as shall be fixed by regulations hereunder, and such fees shall be collected and accounted for by such persons and in such manner, and shall be paid to such accounts as shall be required by regulations hereunder. Fees charged.

(2) Any expenses which might be retained or paid out of the trust property if the public trustee were a private trustee shall be so retained or paid, and the fees shall be retained or paid in the like manner as and in addition to such expenses.

(3) The fees under this section shall be arranged from time to time so as to produce an annual amount incidental to the working of this Act (including such sum as the Colonial Treasurer may from time to time determine to be required to insure the Consolidated Revenue Fund against loss under this Act) and no more.

(4) The incidence of the fees and expenses under this section as between corpus and income shall be determined by the public trustee.

Agents of public trustee.

10. (1) The public trustee may appoint any person to act as his agent for the purpose of administering any estate, under an order to collect, and any clerk of petty sessions shall, at his request, act as such agent within his district for such purposes, and with, under, and subject to, such powers, conditions, and limitations as shall be contained in such appointment. Appointment and duties of agents.

(2) Every such agent, not being a clerk of petty sessions, shall give security to the satisfaction of the public trustee for the due performance of his duties.

Vesting of property in public trustee.

11. (1) All orders made by the court empowering the curator of intestate estates to collect, manage, and administer estates shall, Property vested and powers transferred.

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on the commencement of this Act, take effect as orders of the court, empowering the public trustee to collect, manage, and administer such estates.

(2) All property, real and personal, including books, documents, moneys, and securities for money, at present vested in or held by or on behalf of the curator of intestate estates by virtue of any order made under any Act, shall on the commencement of this Act pass to and become vested in the public trustee.

PART III.

POWERS, DUTIES, AND IMMUNITIES OF PUBLIC TRUSTEE.

General powers and duties.
6 Ed. VII, c. 55, s. 2.

12. (1) The public trustee shall, subject to the provisions of this Act and rules made thereunder, be capable of being appointed and of acting under that name—

- (i) as a trustee ;
- (ii) as an executor or administrator, including administrator pendente lite ;
- (iii) as collector of estates under an order to collect ;
- (iv) as an agent or attorney.

Powers, duties, rights, and immunities.
Ibid. s. 2 (2).

(2) The public trustee shall have all the same powers, duties, and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of any court as a private person acting in the same capacity.

Public trustee may decline trust.
Ibid. s. 2 (3).

(3) The public trustee may decline, either absolutely or except upon conditions, to accept any trust or to act as executor, administrator, agent, or attorney, but shall not so decline on the ground only of the small value of the trust property or estate concerned.

Not to accept certain trusts.
Ibid. s. 2 (4) (5).
N.Z. 1908, No. 159, s. 10 (2).

(4) The public trustee shall not accept any trust under a deed of arrangement for the benefit of creditors, nor any trust exclusively for religious or charitable purposes, nor the administration of any estate known or believed by him to be insolvent.

The public trustee as a trustee.

Appointment under wills and settlements.
6 Ed. VII, c. 55, s. 5 (1.)

13. (1) The public trustee may by that name, or any other sufficient description, be appointed to be trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty

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duty belonging to a class which he is authorised by this Act to accept, and may be so appointed whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the passing of this Act, and either as an original or as a new trustee, or as an additional trustee, in the same cases, and in the same manner, and by the same persons or court, as if he were a private trustee, with this addition, that, though the trustees originally appointed were two or more, the public trustee may be appointed sole trustee, and notwithstanding the terms of the trust or the will as to the number of trustees :

Provided that in cases of estates greater than five hundred pounds in value, the public trustee shall not be appointed as a new trustee except by or by leave of the Supreme Court in its equitable jurisdiction.

(2) The public trustee shall not be so appointed as a new trustee where the will, settlement, or other instrument creating the trust or duty contains a direction to the contrary, nor in any case in which the majority of the persons who shall be beneficially interested shall not consent to such appointment unless such court otherwise order.

Not as new trustee where settlement forbids.
6 Ed. VII, c. 55, s. 5 (3).

(3) Notice of any proposed appointment of the public trustee as a new or additional trustee shall where practicable be given to all persons beneficially interested who are resident in New South Wales and whose addresses are known to the persons proposing to make the appointment, or, if such beneficiaries are infants, to their guardians, and if any person to whom such notice has been given within twenty-one days from the receipt of the notice applies to the Supreme Court, in its equitable jurisdiction, such court may, if having regard to the interests of all the beneficiaries it considers it expedient to do so, make an order prohibiting the appointment being made, provided that a failure to give any such notice shall not invalidate any appointment made under this section.

Notice to be given.
Ibid. s. 5 (4).

14. Where the value of the trust estate does not exceed five hundred pounds, trustees under a deed or will, whether appointed before or after the commencement of this Act, may, without application to the said court, unless expressly prohibited by the settlor or testator from so doing, and notwithstanding the terms of the trust or the will as to the number of trustees, appoint the public trustee (if he consents thereto) sole trustee in their place.

Where value of trust estate does not exceed five hundred pounds.

15. Applications for the appointment of the public trustee as new or additional trustee may be made by motion or in such other manner as may be provided by rules which the Chief Judge in Equity is hereby empowered to make. The said court may on such application make such order as it thinks fit.

Applications for the appointment of public trustee.

16. (1) Upon any appointment of the public trustee under any order of the said court, all the trust property in respect of which

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which he is so appointed shall, subject to the trusts thereof, by virtue of such appointment and without other assurances in the law, become and be conveyed, assigned, and transferred, so that the same shall thereupon become and be legally and effectually vested in him.

Provided that where any portion of the trust property is subject to the provisions of the Mining Acts, the Crown Lands Acts, or the Real Property Act, 1900, unless the said court shall make a vesting order in respect thereof, the necessary and appropriate transfers shall be executed and registered so as to transfer such property to the public trustee, and until such transfers are so executed and registered such trustees or executors shall not be discharged from the trusts in respect of such portions of the trust property.

(2) So often as the public trustee is appointed under sections thirteen and fourteen hereof he shall have the same powers, authorities, and discretions, and shall, subject to the provisions of this Act and rules made thereunder, act as if he had been originally appointed a trustee of the said property.

Where consent to appointment refused.

17. Where, by the terms of an instrument of trust or a will, the consent of any person is requisite to the appointment of a trustee, and such person refuses to consent to the appointment of the public trustee to such office, or where the person whose consent is so requisite is an infant, idiot, or lunatic, or a person of unsound mind, or is absent from the State, or is under any other disability, then such appointment of the public trustee may be made without such consent, if the said court so orders and directs :

Provided that where any such person whose consent is so requisite is an insane patient, insane person, or incapable person as defined by the Lunacy Act, 1898, then the Master in Lunacy shall be deemed to be the person whose consent is so requisite in the place and stead of such insane patient, insane person, or incapable person.

The public trustee as executor or administrator.

Grant of probate or administration to public trustee.
6 Ed. VII, c. 55,
s. 6 (1).

18. (1) The court may grant probate or letters of administration of any will or estate to the public trustee by that name, and for the purpose of administration the court shall consider the public trustee as in law entitled equally with any other person or class of persons to obtain the grant, save that the consent or citation of the public trustee shall not be required for the grant of letters of administration to any other person, and that, in the case of intestacy as between the public trustee and the widower, widow, or next of kin of the deceased, the widower, widow, or next of kin shall be preferred, unless for good cause shown to the contrary.

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(2) Any executor who has obtained probate or any administrator who has obtained letters of administration, notwithstanding that he has acted in the administration of the deceased's estate, and notwithstanding the existence of any other executor or administrator, may apply to the court for an order transferring such estate to the public trustee for administration.

Transfer of administration to public trustee.
6 Ed. VII, c. 55,
s. 6 (2.)

Upon the making of any such order the estate of the deceased left unadministered and all rights and obligations in respect thereof shall, without other assurances in the law, become and be conveyed, assigned and transferred to the public trustee as executor or administrator as the case may be, so that the same shall thereupon become and be legally and effectually vested in him, and subject to the provisions of this Act, the public trustee shall have all the powers of such executor or executors, administrator or administrators, and such executor or executors, administrator or administrators, shall not be in any way liable in respect of any Act or default in reference to such estate subsequent to the date of such order other than the act of default of himself or themselves, or of persons other than himself or themselves for whose conduct he or they is or are in law responsible:

Provided that where any portion of such estate is subject to the provisions of the Mining Act, the Crown Lands Act, or the Real Property Act, 1900, the necessary and appropriate transfers shall be executed and registered so as to transfer such property to the public trustee, and, until such transfers are so executed and registered, such executor or executors, administrator or administrators shall not be discharged from the trusts in respect of such portions of the estate.

(3) Applications to the court under the preceding subsection may be by motion or in such manner as may be provided by rules which the probate judge is hereby empowered to make, and the court may in any case require the giving of such notices, the citation of such persons and the production of such evidence as it may think fit before the making of any such order.

The public trustee as collector under an order to collect.

19. (1) When any person who at the time of his death was domiciled or had property in New South Wales, dies testate, whether such death occurred within or outside New South Wales, and whether before or after the commencement of this Act, the court may, on the application of the public trustee, grant to him an order to collect the estate of such person in any of the following cases:—

Order to collect testate estate.
cf. No. 13, 1898,
s. 116.

- (a) Where such person leaves no executor willing and capable of acting in execution of his will resident within the jurisdiction.
- (b) Where the executors named renounce probate of the will of the deceased.
- (c)

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- (c) Where probate or administration cum testamento annexo is not applied for within three months after the death of such person.
- (d) Where, after the expiration of sixty days from such death, there is no reasonable probability of application being made within such period as aforesaid.
- (e) Where the estate or any portion thereof is liable to waste, and the executor—
- (i) is absent from the locality of the estate; or
 - (ii) is not known; or
 - (iii) has not been found; or
 - (iv) requests the public trustee in writing to apply for such order.
- (f) Where the estate or any portion thereof is—
- (i) of a perishable nature; or
 - (ii) in danger of being lost or destroyed.
- (g) Where great expense may be incurred by reason of delay.
- (2) The court may in any case require the public trustee to—
- (a) give such notices, or
 - (b) cite such persons, or
 - (c) produce such evidence
- as it may think fit before granting the order applied for, and may make such order for a limited time, or limited to a portion of the estate or otherwise.

Effect of order,
cf. No. 13, 1898,
s. 117.

20. (1) An order to collect the estate of any deceased person shall give to the public trustee the same powers, rights, immunities, and duties in respect of such estate, except as hereby enacted, as he would have had if administration had been granted to him.

(2) Subject to the provisions of this Act, all laws now or hereafter in force in reference to the administration of the estates of deceased persons shall apply to the administration of estates by the public trustee.

Probates and
administrations may
be granted
notwithstanding
appointment of
public trustee.
Ibid. s. 118.

21. (1) Notwithstanding any such order to collect, the court may grant probate of the will or administration cum testamento annexo of the estate of any deceased person to any person entitled to the same in such manner and subject to such limitations or conditions as it thinks proper.

(2) No application for any such grant shall be made until seven days after notice in writing of the intention to apply for the same has been left at the office of the public trustee.

On such grant,
duties and liabilities
of public trustee
to cease.
Ibid. s. 119.

22. (1) Immediately on the grant of any such probate or administration, all the interest, powers, rights, and duties of the public trustee (except such rights as are conferred by this section) in regard to

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to the estate of the deceased person whose estate is affected by such grant, and all liabilities of the public trustee under any contract or agreement entered into by him in relation to such estate or any part thereof, shall cease.

(2) Such portion of the estate of such person as is left unadministered by the public trustee, and all rights and obligations of the public trustee in respect thereof shall vest in the executor or administrator obtaining such probate or administration.

(3) Nothing herein contained shall interfere with the allowance and payment of—

- (a) all money due for the commission of the public trustee or his agents; and
- (b) the necessary outlay, disbursements, costs, charges, and expenses in relation to such estate; including
- (c) all costs of and incidental to appearing on the application for such probate or administration.

(4) Nothing herein contained shall relieve the public trustee from any liability in respect of his management of the estate up to the time of granting such probate or administration.

23. (1) Whenever it is made to appear to the court that there is reasonable ground to suppose that any person has died either in or out of the jurisdiction of the court intestate, leaving property within such jurisdiction, the court may order and empower the public trustee to collect the estate of such person both real and personal.

When there is reasonable ground to believe that any person has died intestate leaving property in the jurisdiction, the public trustee may obtain order to administer without strict proof of death. cf. No. 13, 1898, s. 120.

(2) Every such order shall be valid until revoked, and shall empower the public trustee to—

- (a) collect, manage, and administer the personal estate of such supposed deceased person; and
- (b) enter upon and receive the rents and profits and otherwise manage the real estate; and
- (c) pay and discharge the debts and liabilities of such person, in like manner as if he were certainly dead and the public trustee had obtained an order to collect the estate of such person under the provisions of section eighteen.

(3) The public trustee shall not proceed to any distribution of the assets without an order of the court specially authorising him to make such distribution.

24. Within fourteen days after any order to collect has been granted the public trustee shall, unless the court otherwise orders, cause notice of the fact that such order has been granted to be published—

Notice of order to collect to be published. *Ibid.* s. 121.

- (a) twice in some daily newspaper published in the city of Sydney; and if the person whose estate the public trustee has been ordered to collect did not reside in such city, then also

(b)

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(b) twice in some newspaper published in the town or place where such person resided ;
or if there is no newspaper published in such town or place, then

(c) twice in some newspaper circulating in or next to such town or place.

25. The public trustee shall—

(a) cause like notices to be published in newspapers published or circulating in the town or place where the next of kin are known or supposed to reside ; and in the case of foreigners,

(b) give notice to the consul of the country where the next of kin are supposed to reside, if there is any such consul resident in Sydney,

unless the court in any case otherwise orders.

26. With respect to moneys and personal chattels payable or deliverable by the public trustee to the subjects of foreign countries, the Governor may, by notice in the Gazette, notify that such moneys or personal chattels may be paid or delivered to the chief consular officer for such foreign country in New South Wales on behalf of such subject ; and the receipt in writing of such chief consular officer shall be a good discharge to the public trustee therefor.

27. (1) Any person interested as creditor, next of kin, beneficiary, or otherwise in the real or personal estate of any deceased person which the public trustee has been ordered to collect may—

(a) on the neglect or refusal of the public trustee to do any act in relation to the administration of such estate ; or

(b) on his doing or threatening to do any act in breach of his duty with reference to the said estates,

apply *ex parte* upon affidavit to the Probate Judge in chambers—

(i) for an order calling upon the public trustee to show cause upon a day not less than two days from the service of such order upon him before the court why he should not do or abstain from doing such act ; and

(ii) for an interim order in the nature of an injunction if warranted by the facts of the case.

(2) Any such order may be granted subject to such conditions as to giving security for costs as the court may impose.

28. (1) Upon the hearing of any such complaint the court may receive proof of the matters in relation thereto orally or by affidavit, and may make such order thereon as the circumstances of the case may require, and as to payment of costs—

(a) by the complainant ; or

(b) by the public trustee personally ; or

(c) from the estate administered by him ; or

(d) from the public trustee's account,

as in its discretion seems just.

Like notices to next of kin.
cf. No 13, 1898,
s. 122.

Consular officers in New South Wales to receive residue for residents in foreign countries.
N.Z. 1908, No. 159,
s. 52.

Court to have summary jurisdiction over public trustee.
No. 13, 1898,
s. 123.

Applications, how heard.
Ibid. s. 124.

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(2) Such orders shall have the same effect and be enforceable by the same process as if made by the Supreme Court in its equitable jurisdiction in a suit between the parties to such complaint.

29. In all cases where an order to collect is made under this Part of this Act, the court may, on the petition of the public trustee or any person interested in the estate, make such orders touching the collection, sale, investment, and disposal of the estate as to the court seems meet. Public trustee to act as court shall direct. No. 13, 1898, s. 125.

30. (1) In every case in which the estate of any deceased person is administered by the public trustee under this Part of this Act— Mode of proceeding under this Act in case of dispute or claim. Ibid. s. 126.

(a) all disputes and matters touching the collection, management, or administration of the same; and

(b) all claims and demands thereon

shall, except as provided in subsection two of this section, be decided by the court on petition.

(2) In any case in which it appears to be not desirable that the matter in question should be so decided, the court may direct such proceedings to be instituted as appear proper for the due decision thereof.

31. (1) The public trustee shall, at such times as he thinks fit, cause advertisements to be published in the Gazette and such public newspapers as he deems expedient, calling upon the creditors of the persons whose estates he has been ordered to collect to come in and prove their debts before him, on or before a time to be fixed in such notice. Proof and payment of debts. Ibid. s. 127.

(2) The public trustee may allow any claim which is made before him upon the affidavit of the claimant alone or where he shall think fit to call for further evidence upon such further evidence as he requires.

(3) The public trustee shall, as soon after the expiration of the time allowed for proof of debts as he conveniently can—

(a) pay the debts proved, if the whole thereof can be paid; and if not

(b) declare and pay a dividend thereon.

(4) If he collects any further assets after making such payment he shall pay any part of the proved debts remaining unpaid, and any debts subsequently proved before him (or a dividend thereon, as the case may be).

(5) Such creditors as subsequently prove shall first be paid a dividend equal to the dividend paid to creditors having previously proved their debts.

(6) After payment of all debts, fees, and expenses incident to the collection, management, and administration of such estate, the public

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public trustee shall pay over the residue to the personal representative, if any, of the intestate or testator (as the case may be) so soon as such representative is duly constituted.

Payment to relatives, &c., in petty cases.
No. 13, 1898, s. 128.

32. If at the expiration of three months from the time fixed by the advertisement for creditors to come in and prove their debts—

- (a) no debt has been proved; or
- (b) no creditor having proved his debt remains unpaid;

the public trustee, with the approval of the court, may pay any sum to any person claiming to be a party in distribution or to be a legatee under a will without administration having been obtained or the will being proved, and upon such evidence of the right or title of the party so claiming as the court may, under the circumstances, deem sufficient.

Special powers of public trustee.

Payment to widow.
cf. N.Z. 1908,
No. 159, s. 22.

33. Where the net value of an intestate estate under administration by the public trustee does not exceed one hundred pounds, he may, if he thinks fit, pay the whole of such residue to the widow (if any) of the intestate. Such net value shall be ascertained in the manner provided by section fifty-five of the Principal Act.

Maintenance, &c., of infant out of share not exceeding £100.
Ibid. s. 23.

34. When the share of any infant entitled in the distribution of any intestate estate under administration by the public trustee does not exceed one hundred pounds, then, with respect to such infant, the public trustee may from time to time pay such share to such person as the public trustee thinks fit, to be applied by such person for the maintenance, education, and advancement of such infant or may himself so apply such share.

General powers of public trustee.
N.Z. 1894, s. 27.
N.Z., 1908, No. 159,
s. 29.

35. (1) Where the public trustee is appointed trustee, executor, or administrator, or is otherwise authorised to act under this Act, then, unless expressly prohibited by this Act or by or under an instrument, he may, at his discretion, but in addition to and not as restricting any other powers, exercise the following powers—

- (a) sell property by public auction or private contract, altogether or in parts, and subject to such conditions as he thinks fit;
- (b) exchange property or join in a partition of property;
- (c) lease property for a term not exceeding three years;
- (d) repair and insure against fire or accident any property;
- (e) pay rates, taxes, assessments, insurance premiums, and other outgoings;
- (f) borrow money upon the security of property, and secure the payment thereof and interest by mortgage or charge of such property, with or without a power of sale, and enter into such covenants, provisions, and agreements as may be agreed upon by the public trustee and the mortgagee. The power to give such

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such security as aforesaid shall extend to any debt or liability incurred prior to the public trustee's appointment, and the public trustee may pay the interest secured by such mortgage or charge out of the income, or, if such income be insufficient, out of capital;

- (g) bring or defend any action, suit, or other proceeding, and suffer judgment to go by default, or consent to any decree or order in such action, suit, or proceeding, upon such terms as the public trustee thinks fit;
- (h) take proceedings to cause a person to be adjudicated bankrupt or a company to be placed in liquidation, and vote and act either personally or by proxy at meeting of creditors or shareholders, whether the company be in liquidation or not;
- (i) take criminal proceedings touching or concerning property;
- (j) pay debts, obligations, costs, and expenses;
- (k) carry out contracts entered into before his appointment to any such office as aforesaid;
- (l) consult with and employ such persons as he may deem expedient for the purpose of advising or assisting him in the due administration of any trust vested in him and remunerate any such person in such manner as he shall think fit.
- (m) do or omit all acts and things, and execute all instruments necessary to carry into effect the powers and authorities hereby given:

(2) Provided that, unless under the express authority of this Act or of any instrument, the public trustee—

- (n) shall not, under paragraph (a) aforesaid, sell property of a greater value than two hundred and fifty pounds;
- (o) shall not under paragraph (b) aforesaid exchange property of a greater value than two hundred and fifty pounds or join in a partition in which the interest of any person entitled thereunder exceeds two hundred and fifty pounds.
- (p) shall not, under paragraph (f), borrow money to an amount exceeding five hundred pounds,

without the order of a judge of the Supreme Court; which order may be general, or may apply only to a particular case, as the judge may think fit.

Investments.

36. (1) The public trustee may invest the moneys in his hands in— Manner of investment.

- (i) any public funds, or Government stock, or Government securities;
- (ii) real securities in any part of New South Wales, including leaseholds having an unexpired currency of not less than thirty years;
- (iii)

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(iii) any of the stocks, funds, or securities in or upon which, by any general order, cash under the control of the Supreme Court in its equitable jurisdiction may from time to time be invested.

(2) The public trustee shall, with respect to such investments, have all the powers which are conferred upon trustees, executors, and administrators by sections four and five of the Trustee Act, 1898.

Liability of Consolidated Revenue.

37. The Consolidated Revenue Fund shall be liable to make good all sums required to discharge any liability which the public trustee, if he were a private trustee, would be personally liable to discharge except where the liability is one to which neither the public trustee nor any of his officers has in any way contributed and which neither the nor any of his officers could by the exercise of reasonable diligence have averted, and in that case the public trustee shall not, nor shall the Consolidated Revenue Fund, be subject to any liability.

Accounts.

Moneys in public trustee's account to be Crown property. N.Z., 1908, No. 159, s. 36.

38. Moneys in or payable into the public trustee's account by the public trustee, the deputy public trustee, or any officer, servant, or person acting or purporting to act under the authority of this Act, shall be deemed to be property of His Majesty for the purposes of this Act, and shall be recoverable in like manner as money due to the Crown is recoverable.

Advances to estates for administration purposes. *Ibid.* s. 38.

39. (1) The public trustee may make advances out of moneys appropriated by Parliament and standing to the credit of the public trustee's account for the payment of expenses necessarily incurred by him in the administration of the estate of any deceased person, and, until such advances have been repaid out of such estate, the public trustee may charge such estate with interest on the sums so advanced at a rate not exceeding five pounds per centum per annum.

(2) All interest received under this provision shall be paid into the Consolidated Revenue Fund.

Balance sheet. *Ibid.* s. 39.

40. The public trustee shall, within thirty days after the close of each year, ending on the thirtieth day of June, prepare a balance sheet setting forth—

- (a) the total receipts and expenditure of or in the public trustee's account during each year, and the property and investments held and made during that period;
- (b) a profit and loss account setting forth the total revenue and expenditure of the public trust office, including advances from Consolidated Revenue Fund and losses chargeable to such revenue.

The

Public Trustee.

The public trustee shall send such balance sheet to the Colonial Treasurer by whom it shall forthwith be laid before Parliament if in session, or, if not in session, then within thirty days after the next meeting thereof.

41. The Colonial Treasurer, and any officer of the Treasury authorised by him, shall have at all times access to all the books, accounts, documents, and papers in the public trust office, and the public trustee shall at all times furnish to the said Treasurer all such information as the latter requires. The Auditor-General shall have in respect to the public trust office, and to all the officers and servants employed therein, all the powers which he possesses in respect to the officers and servants in the public service.

Inspection of books of public trustee. N.Z. 1908, No. 179, s. 42.

42. (1) Every person into whose hands or under whose control any moneys come which are payable to the public trustee shall pay the same to the public trustee's account as soon as practicable after their receipt and until so paid such person shall be deemed a debtor to the Crown in respect of such moneys.

Payments to public trustee's account. Ibid. s. 43.

(2) It shall, notwithstanding, be lawful for any officer, servant, or agent of the public trustee to pay, out of any moneys in his hands, any claims which he is directed by the public trustee to pay.

Shares and stock.

43. (1) Where the estate of any person which is being administered by the public trustee consists wholly or partly of shares, stock, or property in any body, whether corporate or not, or in any association, or where such shares, stock, or property are vested in the public trustee under the terms of any settlement, or are purchased by him in the exercise of any trust, direction, or authority imposed or conferred upon him, then, notwithstanding any law or provisions affecting the registration of persons holding shares, stock, or property as trustees, or in any other representative capacity, the public trustee shall be entitled to be registered as the proprietor of such shares, stock, or property as trustee, or in any other representative capacity, as he may require; but under no circumstances shall his liability in respect of such shares, stock, or property exceed the value of the other assets which, at the time when any demand is made for the satisfaction of any such liability he holds in trust for the person beneficially entitled to such shares, stock, or property.

Shares and stock. Ibid. s. 44.

If such assets are insufficient to meet such liability, then such body or corporation and any person lawfully acting on its behalf shall, in respect of any unpaid balance of such liability, have the same rights and remedies against any such person so beneficially entitled as if the latter were the registered proprietor of such shares, stock, or property.

(2)

Public Trustee.

(2) The public trustee, upon registration, shall for all purposes, excepting as to liability as aforesaid, be deemed to be the registered proprietor of any such shares, stock, or property; and neither the body nor association aforesaid, nor any person dealing with the public trustee, shall be concerned to see or inquire whether any acts, dealings, or transactions by or with the public trustee are or are not within his powers.

Protection to public trustee.

Acts of public trustee deemed to be bona fide.

44. Where, under the bona fide belief that a person has died testate or intestate, the public trustee takes out probate or administration, or administers under statutory powers, or is appointed or acts as a trustee under a will, and afterwards it is found—

- (a) that such person is living; or
- (b) that he did not die intestate; or
- (c) that a will exists which revokes or alters the will which the public trustee has proved or under which he becomes administrator, or under which he is administering or is acting as trustee; or
- (d) that such lastmentioned will is invalid;

then, notwithstanding that such person is living, or that the deceased did not die intestate, or that he made a will revoking or altering the provisions of the will of which the public trustee has taken out probate or administration or under which he is appointed or is acting as trustee, or that such lastmentioned will is invalid, all acts and things done or omitted by the public trustee, his deputies, officers, servants or agents by virtue of such probate or in the course of any such administration, or as such trustee shall, unless the contrary be proved, be deemed to have been done or omitted bona fide in the performance of his or their duty respectively.

The proof of the absence of such bona fide belief shall be upon any person seeking to controvert it.

Nothing in this section shall be taken to deprive a person who has suffered loss or damage by reason of any such act or omission of the public trustee, of any remedy he may have at law or in equity against the public trustee in his corporate capacity, nor affect the remedy of such person against the person or persons who have shared in the distribution of any estate or received the benefit of any trust so administered or executed by the public trustee.

Public trustee and agent not personally liable for bona fide acts.

No. 13, 1898,
s. 133 (2).

45. Neither the public trustee nor any of his deputies, officers, servants, or agents shall be personally liable to any person for any act done bona fide in the performance of their duties respectively, unless it is shown that such act was done, not only illegally but wilfully or with gross negligence.

Public Trustee.

46. Neither the public trustee nor any of his deputies, officers, servants, or agents shall be personally liable to any person in respect of goods or chattels in the possession of any testator or intestate at the time of his death which are sold by the public trustee or any such deputy, officer, servant or agent as the goods of such testator or intestate, unless the public trustee or his deputy, officer, servant, or agent knows or has actual notice before the sale that such goods or chattels are not in fact the property of such testator or intestate.

Liability of trustee in respect of goods sold.
No. 13, 1898,
s. 133 (1).

47. In case of any sale by the public trustee or his deputies, officers, servants, or agents of goods or chattels belonging to any third person, the amount realised by the sale thereof shall be paid over by him to the owner upon proof of ownership, unless the same has been applied in the payment of the debts of the deceased, or has been distributed according to any will of the deceased, or in the ordinary course of administration, whilst the public trustee or any such deputy, officer, servant, or agent was in ignorance and without actual notice of the claim of such person to the goods or chattels so sold.

Proceeds of sale of goods of third person.
Ibid. s. 134.

48. Where any person, by act or thing done or omitted by the public trustee, the deputy public trustee, or any officer, servant, or person acting or bona fide assuming to act under this Act, sustains any injury which would have entitled such person to a remedy in respect thereof if the said Act or thing had been done or omitted by a private person, then such person shall be entitled to the same remedy against the public trustee in his corporate capacity as he would be entitled to against a private person, and shall be entitled to be indemnified out of the public trustee's account, and if the same is insufficient, then out of such moneys-as may be appropriated for such purpose by Parliament.

Remedy against public trustee.
N.Z., 1908, No. 159,
s. 61.

PART IV.

MISCELLANEOUS.

49. No bond or security other than that required by section eight hereof shall be required from the public trustee before he is appointed, by or under this Act or any other Act, trustee, executor, administrator, agent, or attorney.

No bond by public trustee.
N.Z., 1908, No. 159,
s. 45.

50. When the public trustee is executor or administrator, or is by law authorised to administer the estate of any deceased person, a certificate under his hand, and sealed with his corporate seal, certifying that he has taken out probate or letters of administration, or is authorised to administer, and stating the date when such probate

Certificate of public trustee evidence.
Ibid. s. 51.

or

Public Trustee.

or letters of administration were granted, or when and how he became authorised to administer, and the name, residence, and occupation of the deceased person shall, notwithstanding any statute or law to the contrary, be accepted by all courts, officers, and other persons, whether acting under any Act or not, as prima facie evidence of the death of the deceased person and of the appointment of the public trustee as executor or administrator, or of his right to administer, without production of any other proof whatever.

Service of orders
on public trustee.
N.Z. 1908, No 159,
s. 53.

51. When any court, except upon the application of the public trustee, makes any order—

- (a) directing any payment to be made to the public trustee or into the public trust office; or
- (b) vesting property in the public trustee; or
- (c) appointing the public trustee to be trustee, executor, or administrator,

it shall be the duty of the person who obtains such order forthwith thereafter to serve upon the public trustee a copy thereof, and to deliver to the public trustee a statement of the property affected by the order and where such property is situated or by whom held, so far as the same is known to such person, and such other information as the public trustee shall reasonably require; and in default thereof, such person shall be liable to a penalty of not exceeding ten pounds, which may be recovered summarily before any two justices of the peace, unless he proves that such default was due to accident or was unavoidable.

Escheat.
No. 13, 1898, s. 135.

52. (1) If it appears on office found that any real estate vested in the public trustee has escheated to His Majesty, the net proceeds of sale of such estate shall be paid by the public trustee to the Colonial Treasurer, and shall be carried to the Consolidated Revenue Fund.

(2) A conveyance by the public trustee of such real estate to the purchaser thereof shall operate to pass the right, title, and interest of the deceased intestate to such purchaser.

Unclaimed balances
of intestate estates.
cf. *ibid.* ss. 136, 137.
No. 14, 1906, s. 5.

53. (1) Where on the first day of January in any year any sum of money has been lying for six years or upwards to the credit of any intestate estate under the control of the public trustee, and the public trustee has no information or knowledge of the existence of any person entitled in distribution to any part of such estate, or claiming to be so entitled, he shall, in the first week of the said month, pay such sum into the Treasury; and such sum shall be carried to a special trust account: Provided that the public trustee may retain at credit of any such estate any sums of money which he may consider likely to be required to answer payments to be made out of such estate under any order of the court in force on the said day.

(2) On proof to the court made at any time that any person is entitled in distribution to any part of the intestate estate, the court, on petition, may order the Colonial Treasurer to pay to such person
the

Public Trustee.

the whole or any part of the money so paid into the Treasury in respect of such estate, but without interest thereon, and less the costs of the public trustee in and in connection with the petition.

(3) The said Treasurer shall cause the said payment to be made in pursuance of the order of the court.

54. Where—

- (a) any corporation, association, or person is in possession of any property of a deceased person; or
- (b) there is to the credit of any deceased person in the books or accounts or otherwise of any corporation, association, or partnership any property or money; or
- (c) under any partnership or association any deceased person is entitled to a share in the assets thereof, or his representatives are entitled to any payments as the share in such assets; or
- (d) any deceased person is the registered proprietor of any shares in any corporation or association; or
- (e) any person is indebted to any deceased person,

then if such property, money, shares, or debts are vested in or belong to the public trustee, it shall be obligatory on such corporation, association, or person to forthwith give notice to the public trustee or his agent of the extent, nature, and situation of such property, money, shares, or debts.

Any such corporation, association, or person who wilfully neglects to comply with the provisions of this section shall be liable to a penalty of two hundred pounds recoverable by civil action at the suit of the Attorney-General.

55. Where, before or after the commencement of this Act, the court has ordered the curator of intestate estates or the public trustee to collect the estate in New South Wales of any person who, at the time of his death, was domiciled in one of the other States of the Commonwealth or the Dominion of New Zealand, and whose estate in such other State or Dominion is being administered by the public trustee or curator of such other State or Dominion, the public trustee may pay over to the public trustee or curator of such other State or Dominion the balance of the proceeds of the estate in New South Wales of the said person, after payment of creditors and the charges provided for under this Act, without any obligation to see to the application of such balance, and without incurring any liability in regard to the payment of such balance, and shall certify to an account in favour of the public trustee or curator of such other State or Dominion accordingly.

56. (1) Where the estate of any deceased person, who, at the time of his death was domiciled in New South Wales, is being administered by the public trustee under an order of the court made before or after the commencement of this Act, and the public trustee

Disclosure of
property to
public trustee.
N.Z. 1908, No. 159,
s. 55.

Reciprocity,
where deceased
domiciled in other
States or
New Zealand.

Where deceased
domiciled in New
South Wales, and
administration
granted in other
States or
New Zealand.

Public Trustee.

or curator of any of the other States or of the Dominion mentioned in the last preceding section has in such other State or Dominion obtained administration of the estate in such other State or Dominion, the public trustee may receive from the public trustee or curator of such other State or Dominion the balance of the proceeds of the estate in such other State or Dominion.

(2) Such balance shall, when so received, form part of the estate of the deceased person, and shall be dealt with according to the law of New South Wales.

Solicitor,
accountant, &c.,
conducting business
of estate.

57. Where by any settlement, will, codicil, or other testamentary writing a settlor or testator shall direct that any practising solicitor, accountant, broker, or banker shall conduct the legal or other business of his or her estate, such solicitor, accountant, broker, or banker shall be entitled to act therein accordingly, but in such case the public trustee shall not be liable for the negligence, malfeasance, misfeasance, nonfeasance, or misconduct of such solicitor, accountant, broker, or banker, and such solicitor, accountant, broker, or banker may be removed by order of the Supreme Court in its equitable jurisdiction upon the application of the public trustee or of any person interested in the said estate upon cause shown, and then and in such case the said Court may appoint any other person to conduct such business.

Stamp duty.

58. No deed or instrument whereby the public trustee is appointed as a new trustee or as executor or administrator in the place of any existing executors or administrators or whereby any property is transferred to the public trustee in consequence of such appointment shall be liable to stamp duty.

Regulations.

Regulations.
N.Z. 1908, No. 159,
s. 62.

59. The Governor may make regulations—

- (a) for the conduct of the business of the public trust office;
- (b) for determining the duties of the officers, servants, and persons employed therein;
- (c) for the custody of all property placed therein and the instruments of title relating thereto;
- (d) for fixing scales of commission and other charges to be made by the public trustee under this Act;
- (e) for the receipt and payment of moneys under this Act;
- (f) for keeping, rendering, and auditing accounts under this Act;
- (g) for determining in what securities other than those specified in section thirty-six moneys may be invested for a period not exceeding twelve months.
- (h) for the safe custody of securities;

(i)

Public Trustee.

- (i) for the custody of the moneys in the public trustee's account, and the payment of moneys to or withdrawal of moneys from such account, and the mode of keeping and auditing the said account, and any other account that may be deemed necessary in the business of the public trust office;
- (j) for any object or purpose that may be deemed necessary for the administration of this Act.

All such regulations shall be published in the Gazette and laid before both Houses of Parliament within ten days after the gazetting thereof if Parliament is then sitting, or if not, then within ten days after the commencement of the next coming session.

But if either House of Parliament passes a resolution of which notice has been given at any time within thirty sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.

Consequential amendments of Principal Act.

60. The enactments of the Principal Act mentioned below are amended as follows:— Amendments of
Principal Act.

- (a) Section three, by substituting "public trustee" for "curator of intestate estates" in the definition of "administrator."
- (b) Section thirty-eight, by omitting the words "or deputy curator, as the case may be, if any" and "or curator, respectively."
- (c) Section sixty-seven, by substituting "registrar" for "curator" in that section.
- (d) Section seventy-five, by substituting "public trustee" for "curator."
- (e) Section seventy-six, by inserting "or the public trustee" after "next of kin."
- (f) Section eighty-nine, by substituting "public trustee" for "curator."

SCHEDULE.

Enactments of Principal Act repealed by this Act.

- Section 37.
- Section 39.
- Sections 111 to 137 (Division 6 of Part II).