

THE PUBLIC TRUST OFFICE ACT, 1912.

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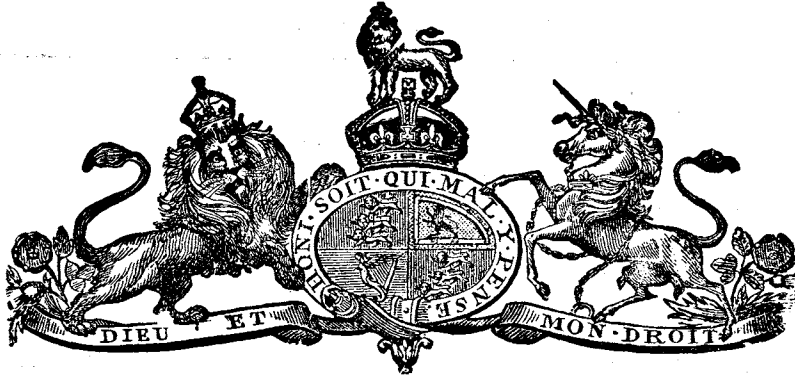
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TASMANIA.



1912.

ANNO TERTIO

GEORGII V. REGIS.

No. 26.

AN ACT to establish the Office of Public Trustee and to deal with Lands where the Owner thereof is Unknown, and for other purposes. [17 December, 1912.]

A.D. 1912.

(1926) V.L.R. 266.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may for all purposes be cited as "The Public Trust Office Act, 1912." Short title.

2—(1) On and from the commencement of this Act the proviso to Section Twelve of the Imperial Act 9 Georgii IV., Cap. 83, shall cease to be in force in this State. Repeal.

(2) On and from the commencement of this Act the Acts mentioned in the schedule to this Act are hereby repealed to the extent therein stated : Provided that all proceedings which shall have been commenced under such Acts, or any of them which are still pending and incomplete, shall be in force notwithstanding such repeal, and shall be continued under this Act. Proviso.

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Division of Act.

Interpretation.
1908, No. 159,
s. 2 (N.Z.).

- 3 This Act is divided into parts, as follow :—
Part I.—The Public Trust Office.
Part II.—Unclaimed Lands.
Part III.—Unclaimed Property.
- 4 In this Act, if not inconsistent with the context—
“Court” or “judge” includes any court or judge having jurisdiction :
“Estate” or “estates” means any property under administration or held, managed, or controlled by the Public Trustee under this Act, either as trustee, executor, administrator, guardian, committee, agent, or attorney, or in any other capacity :
“Instrument” includes Act of the Parliament of this State :
“Land” or “real estate” includes lands, tenements, and hereditaments, whether corporeal or incorporeal, and any share, estate, or interest in them, and any possibility, right, or title of entry or action, and whether in possession, reversion, remainder, expectancy, or contingency :
“Person of unsound mind” means a person who is not a lunatic or idiot, but who is incapable of managing his affairs, whether by reason of infirmity of mind, age, or any other cause :
“Property” includes both real and personal property :
“Public Trustee” means the Public Trustee as constituted by this Act :
“Treasurer” means the Treasurer for the time being of this State :
“Trust” does not include the duties incident to an estate mortgaged ; but, with this exception, “trust” and “trustee” include implied and constructive trusts, and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and include also the Crown or the Governor, or any other public officer, or an executor or administrator, and the duties incident to the office of personal representative of a deceased person.

PART I.**THE PUBLIC TRUST OFFICE.***Constitution of the Public Trust Office.*

Public Trust
Office.
Ibid., s. 3.

- 5 There shall be an office called “the Public Trust Office,” administered by an officer called “the Public Trustee.” The Public Trustee and such other officers as may be necessary for the effectual administration and execution of this Act shall be appointed in conformity with

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the provisions of "The Public Service Act, 1905," and any Act A.D. 1912. amending or substituted for the same.

6 The Public Trustee for the time being in office under this Act shall *ex officio* be Curator of Intestate Estates. Public Trustee substituted for Curator of Intestate Estates.

On the passing of this Act the Curator of Intestate Estates in office under the said repealed Acts immediately before the passing of this Act shall cease to hold that office, and the Public Trustee shall become administrator of all and singular the real and personal estate, effects, and credits of every deceased person whose estate the Curator of Intestate Estates shall have been authorised to collect, manage, or administer, as fully as if letters of administration had been granted to the Public Trustee.

All the real and personal estate and effects whatsoever vested in the Curator of Intestate Estates shall, by the mere operation of this section, vest in and belong to the Public Trustee, and be deemed to be placed in the Public Trust Office; and all moneys in any bank to the credit of any estate the Curator of Intestate Estates is authorised to administer, and all investments thereof, shall on the passing of this Act be deemed to be placed in the Public Trust Office.

Wherever the expression "Curator of Intestate Estates" shall occur in any Act, by-law, regulation, rule, document, deed, or instrument, the same shall be read and construed as if the expression "Public Trustee" were substituted therefor.

The person, who at the commencement of this Act holds the office of Curator of Intestate Estates, shall be deemed without further appointment to have been duly appointed Public Trustee.

7—(1) The Public Trustee is hereby constituted a corporation sole, with perpetual succession and a seal of office. Public Trustee a corporation sole. *Ibid.*, s 4.

(2) The appointment of the Public Trustee and of the Deputy Public Trustee and the seal of the Public Trustee, and the signature of the person for the time being holding the office of Public Trustee or of Deputy Public Trustee, shall be judicially taken notice of without further proof.

8 Where the Public Trustee is authorised to enter into any contract or exercise any power, such authority may be exercised as follows:— Contracts. *Ibid.*, s. 11.

Any contract which if made between private persons, or any power which if exercised by private persons—

Firstly, must be by deed or in writing under seal;

Secondly, must be in writing signed by the parties thereto or the persons executing the power;

Thirdly, may be made or exercised verbally without writing—when entered into or exercised by the Public Trustee—

In the first case, shall be in writing under the seal of the Public Trustee, and signed by the Public Trustee;

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In the Second case, shall be in writing, signed by the Public Trustee ;

In the Third case, may be made or exercised verbally, without writing, by the Public Trustee, or by any person by his direction or on his behalf.

How Estates may be Placed in the Public Trust Office.

Rights and duties to which Public Trustee may be appointed.
Ibid., s. 12.

9—(1) Where the Crown, the Governor in Council, or the Governor, or a public officer, or a court, judge, public or private corporate body, or any person, now or hereafter can appoint a trustee, executor, administrator, guardian, committee, agent, or attorney, any of such appointments may be made of the Public Trustee if he consents thereto.

(2) Subject to the express provisions of this Act, the duties and rights of the Public Trustee under any appointment shall be the same as if the appointment had been of a private person.

(3) Under no circumstances shall the Public Trustee accept any appointment jointly with any other person.

Appointment of Public Trustee by executors and administrators.
Ibid., s. 13.

10—(1) With the consent of the Supreme Court or a judge thereof —

I. Executors, whether appointed before or after the coming into operation of this Act, may, unless expressly prohibited, before or after taking out probate, appoint the Public Trustee sole executor : and

II. Administrators, with or without a will annexed, whether appointed before or after the coming into operation of this Act, may, unless expressly prohibited, appoint the Public Trustee sole administrator.

Trustees may appoint Public Trustee in their place.

(2) Trustees, whether appointed before or after the coming into operation of this Act, and whether appointed under a deed, deed-poll, or will, may, unless expressly prohibited, and notwithstanding the terms of the trust as to the number of trustees, appoint the Public Trustee (if he consents thereto) sole trustee in their place without obtaining the consent of the Supreme Court or a judge thereof.

Executors deemed trustees.

(3) Executors whose duties continue in the nature of a trusteeship after their administration is closed shall for the purposes of the last preceding subsection be deemed to be trustees.

(4) Where there are more trustees, executors, or administrators than One, any One trustee or executor (whether before or after proving a will), or any One administrator, may apply to the Supreme Court or a judge thereof to have the Public Trustee appointed sole trustee, executor, or administrator.

(5) All applications to the Supreme Court or a judge thereof under this section may be by petition, or in such other manner as may be prescribed by rules made under Section Twenty-eight hereof; and the court or judge may, and is hereby given jurisdiction to, make such order as it or he thinks fit.

(6) Where to the appointment of a trustee, executor, or administrator the consent of any person is requisite, and such person refuses to

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consent to the Public Trustee being appointed, or where the person to consent is an infant, idiot, or lunatic, or a person of unsound mind, or is absent from this State, or is under any other disability, then an appointment of the Public Trustee may be made without such consent if a judge of the Supreme Court consents thereto. A.D. 1912.

(7) Where the Crown, the Governor in Council, the Governor, or any public officer, or any court or judge, or any corporate body or association, or person, whether public or private, within or without this State, desires to or can create any trust, then, unless expressly prohibited, the Crown (by the Governor), the Governor in Council, the Governor, or such public officer, court, or judge, corporate body, association, or person may, for the purposes of such trust, appoint the Public Trustee to be trustee upon such trusts and under and subject to such powers, provisions, and conditions as are expressed.

(8) Upon any appointment of the Public Trustee under this or the last preceding section, then by virtue of the appointment all property, rights, powers, and functions shall, without any conveyance or assignment, become thereby vested in the Public Trustee.

(9) The Public Trustee, when appointed or acting under this Act as trustee, executor, administrator, guardian, committee, agent, or attorney, shall have the same rights and immunities as a private person acting in any of those capacities would have.

11—(1) On the death of any person domiciled in this State, or who has property in this State, who has died or hereafter dies in this State or elsewhere intestate, the Public Trustee shall, if he thinks fit to apply therefor, be entitled to administration. Public Trustee entitled, on application, to administration of an intestate estate. *Ibid.*, s. 14.

(2) On such application no further proof of the death and intestacy of any person shall be required than an affidavit that, after due inquiries, the Public Trustee is satisfied that such person died intestate.

(3) The Public Trustee shall be entitled as of right to such administration.

Provided that if some other person in this State who if it were not for this section would be entitled to such administration, applies for such administration, then the Supreme Court or a judge thereof may grant administration to such person.

Provided also that it shall not be necessary for the Public Trustee, nor shall the court or judge require him, to give notice of such application to any such person.

12—(1) Where any person has heretofore died or hereafter dies intestate, in or out of this State, leaving property the gross value of which as estimated by the Public Trustee does not at the time of the election hereinafter mentioned exceed Two hundred and fifty Pounds, and no person has taken out administration, the Public Trustee may, in all cases where he is entitled to take out administration, in lieu of taking out letters of administration or obtaining an order to administer, file in the office of the Registrar of the Supreme Court at Hobart an election in writing setting forth the name, residence, and occupation, Public Trustee may in certain cases elect to administer intestate estate not exceeding £250 without grant of administration. *Ibid.*, s. 15.

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so far as then known to the Public Trustee, of the intestate, and of the property of the intestate as then known, and electing to administer.

(2) On such election being filed the Public Trustee shall be deemed to be administrator of the whole property of the deceased person in all respects as if letters of administration had been regularly granted to the Public Trustee.

(3) The Public Trustee shall publish in the "Gazette" a notice that he has made such election, and such notice shall be conclusive evidence that the Public Trustee is rightly entitled to administer under this section.

(4) If after filing such election the gross value of the property to be administered is found to exceed the sum of Four hundred Pounds, the Public Trustee shall, as soon as practicable thereafter, file in the said office a memorandum under his hand stating the fact, and proceed in the ordinary manner to obtain an order for the administration of the estate.

Public Trustee may exercise certain powers pending grant of probate or administration to person entitled.
Ibid., s. 16.

13—(1) Where any person dies or has heretofore died, whether testate or intestate, and notwithstanding that some person other than the Public Trustee is appointed executor or is entitled to letters of administration, the Public Trustee may, if he thinks fit, until probate or letters of administration are granted, exercise with respect to the estate of the deceased person all such powers and authorities and do all such acts and things as he would have or could exercise or do if the deceased had died intestate and the Public Trustee had obtained administration.

Provided that the Public Trustee shall not sell, lease, exchange, mortgage, or partition any portion of the property (except by sale of such portion of the personal estate as may be of a perishable nature) unless such property is ordered to be sold by a judge of the Supreme Court on the application of the Public Trustee, and which order a judge of the Supreme Court is hereby authorised to make.

(2) All costs, charges, and expenses incurred by the Public Trustee under this section shall be a first charge upon the property of the deceased person.

(3) Any person who afterwards takes out probate or letters of administration of the estate of any such deceased person shall, before he is entitled to a grant thereof, first pay any costs, charges, commissions, and expenses incurred by or payable to the Public Trustee.

Notice to person entitled to obtain probate or letters of administration.
Ibid., s. 17.

14—(1) Before the Public Trustee first acts under the last preceding section he shall give notice, in writing or by telegram, to any person in this State, if known to the Public Trustee as a person who (not being an infant, lunatic, idiot, or of unsound mind) would be entitled to obtain probate or letters of administration, informing such person that he intends to so act unless such person forthwith proceeds to apply for probate or letters of administration.

(2) If such person does not, within a period of Twenty-one days after the posting of such notice or the despatching of such telegram, give notice, in writing or by telegram, to the Public Trustee at Hobart

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that he intends to apply for probate or letters of administration, or if such person gives such notice but fails for Fourteen days thereafter to apply therefor, or makes such application and it fails, then, unless the Supreme Court or a judge thereof otherwise orders, the Public Trustee may proceed to exercise any of the powers and authorities given by the last preceding section. A.D. 1912.

(3) If more persons than one are entitled to take out probate or letters of administration, it shall be sufficient to give notice to One of such persons only.

(4) Nothing herein shall, where it is not actually known to the Public Trustee that there is in this State any person entitled to obtain probate or letters of administration, or in case of emergency (of which emergency the Public Trustee shall be the sole judge), prevent the Public Trustee from exercising the powers and authorities given by the last preceding section without giving such notice as aforesaid.

15—(1) Where any person dies testate, and application for probate or letters of administration is not made within Three months after the death of such person, the Public Trustee may apply for letters of administration, and the Supreme Court or a judge thereof shall make such grant unless the person entitled to probate or letters of administration applies therefor, or shows to the satisfaction of the court or judge that the delay in making such application has been and still is unavoidable or accidental. Public Trustee may administer if no application is made to court for probate or administration within Three months after death.

(2) On such an application no costs shall be awarded against the Public Trustee. Ibid., s. 18.

(3) On the application of any person entitled to probate or letters of administration with the will annexed (or of his attorney) who was out of this State when the grant to the Public Trustee was made, and who has not renounced or refused probate or administration, the Supreme Court or a judge thereof may grant probate or administration to such person in such manner and subject to such limitations or conditions as the court or a judge thinks proper. Administration may, on application, be granted to person entitled who was out of the State when grant made to Public Trustee.

(4) No such application shall be made until after Fourteen days' notice in writing of the intention to apply has been left at the office of the Public Trustee at Hobart.

(5) Immediately on the grant of such probate or administration all the powers, rights, and duties of the Public Trustee (except the rights reserved hereby) in relation to the testator's estate, and all liability of the Public Trustee under any contract entered into by the Public Trustee, or otherwise, affecting or relating to such estate shall cease; and, subject to and on the allowance and payment of all moneys due for commission, necessary outlay, disbursements, costs, charges, and expenses affecting such estate, including the costs of and incidental to the application for probate and administration, and consequent thereon, and, subject also to the provisions of this section, such portion of the estate of the testator as is then unadministered by the Public Trustee shall vest in the person obtaining probate or administration.

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Validation of acts
of Public
Trustee acting
under probate or
administration
granted in error.
Ibid., s. 19.

16 Without prejudice to any protection otherwise afforded, where, under the *bonâ fide* belief (and the absence of such *bonâ fide* belief shall be upon any person who controverts it) that a person has died testate or intestate, the Public Trustee takes out probate or administration, or administers under statutory powers an estate, or is appointed or acts as trustee under a will, and afterwards it is found that such person is living, or did not die intestate, or 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, then, notwithstanding that such person is living, or that the deceased did not die intestate, or 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, all acts and things heretofore or hereafter done or omitted by the Public Trustee shall be as good, valid, and effectual as if he had been lawfully appointed or entitled to act as such executor, administrator, or trustee.

Public Trustee
to hold shares of
infants during
infancy.
Ibid., s. 20.

17 Where the Public Trustee is the trustee, executor, or administrator of a testate or intestate estate, then, as to the shares of infants, the Public Trustee shall (subject to the terms of any will) hold the shares of such infants as trustee for such infants until such infancy ceases; and such shares shall be dealt with and administered in the meantime under this Act.

Special Powers of the Public Trustee.

Shares of infants
may be paid for
their main-
tenance, &c.
Ibid., s. 23.

18 Where there are infants entitled the following provisions shall apply:—

- i. If the share of any such infant in the intestate estate does not exceed Fifty Pounds, then with respect to such infant the Public Trustee may from time to time pay such share to the widow of the intestate, or to such person as the Public Trustee thinks fit, to be applied by such widow or person for the maintenance, education, and advancement of such infant, or may himself so apply such share:
- ii. If the share of any such infant exceeds Fifty Pounds, then the Public Trustee may, with respect to such infant, on an order of a judge of the Supreme Court, to be applied for by the Public Trustee (and which order such judge is hereby authorised to grant), pay so much of such share as such judge from time to time authorises to be paid, either to the widow or to any other person as the Public Trustee thinks proper, to be applied for the maintenance, education, or advancement of such infant, or may himself so apply the same.

Where next-of-
kin cannot be
found, Trustee
may pay residue
of estate to
widow.
Ibid., s. 24.

19 Where any person entitled to the net residue or any part of the net residue of the property of an intestate under administration by the Public Trustee has not, within Three years next after the death of the intestate, established his claim thereto, and where the Public Trustee

Public Trustee.

does not know of any next-of-kin, and cannot by reasonable efforts ascertain that such exist, and the intestate has left a widow who is then living, the Public Trustee may at the expiration of such period pay or transfer to the widow such net residue. A.D. 1912.

Provided that this section shall not prejudice the right of any person entitled to such residue or part thereof to recover the same from such widow.

20—(1) The Public Trustee, where he is a trustee, or acting as trustee, or as executor or administrator, may, if he thinks fit, apply, for the maintenance, education, or otherwise for the benefit of an infant, during the infant's minority, the whole or any part of the income of the share to which such infant is entitled in possession; and may, if he thinks fit, apply, for the advancement or otherwise for the benefit of an infant, any part or parts, not exceeding in the whole One-half of the corpus or capital, of the share to which the infant is entitled in possession or reversion immediately expectant on a prior life interest; but no such application of a reversionary share shall be made without the previous consent in writing of the person on whose death such prior interest is determinable.

Public Trustee may apply income, or not exceeding one-half of capital, for maintenance, &c., of infant. *Ibid.*, s. 25.

Provided that in any case the Public Trustee may for such purposes apply the corpus of the share of any infant to the extent of Five hundred Pounds.

Provided also that the Public Trustee may, instead of himself so applying such income, corpus, or capital, pay the same to any person to be so applied, without seeing to the application or being answerable for the misapplication or non-application thereof.

(2) Nothing herein shall apply to a case where provision is expressly made for the maintenance, education, advancement, or otherwise for the benefit of an infant, or where provision is expressly made against any such application.

Provided that where provision as first aforesaid is made, but it is insufficient, of which insufficiency the Public Trustee shall be the sole judge, then the provisions of Subsection (1) hereof shall apply.

21—(1) In addition to and not as restricting the powers conferred by the last preceding section, where any property is held by the Public Trustee in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently upon the infant attaining a specified age, or on the occurrence of any event before attaining that age, the Public Trustee may, at his sole discretion, apply for or towards the infant's maintenance, education, or benefit the income of that property, or any part thereof, whether there is any fund available for the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not; or may pay such income to any person to be so applied without seeing to the application or being answerable for the misapplication or non-application thereof.

Public Trustee may apply income for benefit of infant. *Ibid.*, s. 26.

(2) The Public Trustee shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time on securities on which he is

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by this Act or by an instrument authorised to invest trust moneys, and shall hold those accumulations for the benefit of the persons who ultimately become entitled to the property from which the same arise; but so that the Public Trustee may at any time, if he thinks fit, apply those accumulations or any part thereof as if the same were income arising in the then current year.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies whether the instrument comes into operation before or after the coming into operation of this Act.

Where infant a member of a class of persons, contingent share may be applied for his benefit.
Ibid., s. 27.

22—(1) In addition to and not as restricting any of the powers conferred by the Two last preceding sections, with the consent of the persons having prior estates or interests in property, whether corpus, capital, or income, held under an instrument, whether the income is directed to be accumulated or not, if such corpus, capital, or income is made payable to a class of persons, and the members of that class, or some of them, would ultimately, on attaining a specified age or on the happening of an event, be entitled to a share of such corpus, capital, or income, and by survivorship or otherwise may become entitled to the shares of the other members of the class, the contingencies being equal, the Supreme Court or a judge thereof may authorise the application of (or the Public Trustee may without such authority apply) the presumptive or contingent shares of infants belonging to the class towards their maintenance, education, or advancement, notwithstanding that there may be future members of the class who may come into existence.

Provided that where any member of the class has attained the required age, or become entitled by age or otherwise, then the consent of such persons shall be necessary to such application.

(2) Applications under this section to the court or a judge may be made by any trustee (including the Public Trustee, but without restricting his powers), or by an infant by petition, or by such other proceeding as is prescribed by rules made under Section Twenty-eight hereof.

Construction of Three preceding sections.
Ibid., s. 28.

23—(1) In construing and giving effect to the respective provisions of the Three last preceding sections, the one shall be taken in aid of the other, and so that each of the provisions can be exercised independently the one of the other.

(2) The provisions of the said sections shall apply to cases arising under any statute or instrument passed or made before or after the coming into operation of this Act.

Court's authority not restricted from making order for maintenance, &c.

(3) Nothing in the said sections shall restrict any court having jurisdiction from making any order for the application of either corpus, capital, or income for the maintenance, education, advancement, or otherwise for the benefit of the infant,

Public Trustee.

24—(1) Where the Public Trustee is trustee, executor, administrator, guardian, or committee, or is otherwise authorised to act, then, unless expressly prohibited by this Act or by or under an instrument, the Public Trustee may at his discretion, but without restricting any other powers, exercise the following powers:—

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 General powers
 of the Public
 Trustee.
Ibid., s. 29.

- i. Sell property by public auction or private contract altogether or in parts, and subject to such conditions as the Public Trustee thinks fit:
- ii. Lease or concur in leasing property for any term not exceeding Twenty-one years, to take effect in possession at a reasonable yearly rent, without taking any fine, premium, or fore-gift:
- iii. Dispose of property by way of exchange for other property of a like nature and tenure, situate in this State, or, where such property consists of an undivided share, concur in the partition of such property, and give or take any property by way of equality of exchange or partition:
- iv. Purchase in fee-simple lands in this State:
- v. Borrow money on 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 between the Public Trustee and the mortgagee: The power to give 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 is insufficient, out of capital:
- vi. Repair any property and insure against fire or accident:
- vii. Pay rates, taxes, assessments, insurance premiums, and other outgoings:
- viii. Exercise powers of appointment, and give consents as fully as the person whom he represents could have exercised or given:
- ix. Grant powers of attorney to any person, in or out of this State, to do any act or thing which the Public Trustee, if personally present, could do:
- x. Bring or defend any action or other proceeding, and suffer judgment to go by default, or consent to any decree or order in such action or proceeding upon such terms as the Public Trustee thinks fit:
- xi. Take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company, and vote and act either personally or by proxy at meetings of creditors or shareholders, whether the company is in liquidation or not:
- xii. Take criminal proceedings touching or concerning property, and for the purposes of such proceedings the property shall,

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unless the contrary is proved, be deemed to be the property of the Public Trustee and in the possession of the Public Trustee :

- xiii. Apply moneys arising from property, and whether income or capital, in or towards the maintenance, education, or advancement of any person :
- xiv. Pay debts, obligations, costs, and expenses :
- xv. Carry out contracts entered into before his appointment :
- xvi. Do or omit all acts and things, and execute all instruments necessary to carry into effect the powers and authorities hereby given.

Provided that the Public Trustee shall not exercise the powers conferred by Paragraph i. of this section where the value of the real property to be sold exceeds Five hundred Pounds, nor the powers conferred by Paragraphs ii., iii., iv., or v. where the value of the property to be dealt with exceeds Two thousand Pounds (unless in either case under this Act or by or under an instrument he is expressly authorised to exercise such powers), without an order of a judge of the Supreme Court, which order such judge is hereby authorised to make upon the application of a Public Trustee. The order may be general, or apply only to a special case, as the judge thinks proper.

- 1 Geo. V. No. 47. (2) For the purposes of the foregoing proviso the value of the property shall be the capital value as ascertained for the purposes of "The Land and Income Taxation Act, 1910," or, where not so ascertained, as estimated by the Public Trustee.

Procedure.

Public Trustee may apply to judge for directions. No. 200, of 1908, s. 75 (N.Z.).

25—(1) The Public Trustee may, without the institution of an action, apply by petition to a judge of the Supreme Court, or by summons upon a written statement to a judge of the Supreme Court at Chambers, for the direction of such judge on any question respecting the management or administration of the trust property, or the assets of any testator or intestate.

(2) Such application shall be served upon, or the hearing thereof be attended by, all persons interested in such application, or such of them as the judge thinks expedient.

Public Trustee acting on order of judge discharged from responsibility. No. 200, of 1908, s. 76 (N.Z.). Proviso in case of fraud.

26—(1) The Public Trustee, acting upon the direction given by the judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as trustee, executor, or administrator in the subject-matter of such application.

(2) Provided that this Act shall not extend to indemnify the Public Trustee, in respect of any act done in accordance with such direction as aforesaid, if he has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such direction; and the costs of such application as aforesaid shall be in the discretion of the judge to whom such application is made.

Public Trustee.

27—(1) In increase of the powers conferred on trustees by Section Forty-five of “The Trustee Act, 1898,” or by any other Act or otherwise, the Public Trustee shall be entitled, without instituting an action, when any question of law arises under this Act or his administration thereunder, to submit to a judge of the Supreme Court a statement in writing setting forth the facts in respect of which such question of law arises, and requiring the judge’s opinion upon the facts so stated; and the judge shall decide upon the facts so stated.

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Public Trustee may submit question of law to judge of the Supreme Court.
Ibid., s. 30.

(2) The Public Trustee may by special case submit for the decision of the Supreme Court any question arising under this Act which appears to him to require such decision, and the court shall give its judgment thereon as if such question had been raised in due form.

(3) The Public Trustee, acting upon any such decision, shall be and be deemed to be indemnified from all acts and things done or omitted thereunder, unless, in representing the facts, he has been guilty of fraud or wilful concealment or misrepresentation.

(4) The court or judge may, on such application or special case, require notice thereof to be served upon such person as such court or judge thinks proper.

28—(1) The judges of the Supreme Court may make general or special rules for the purpose of regulating any proceedings under this Act in the Supreme Court.

Power to make rules.
Ibid., s. 31.

(2) All such rules shall be subject to the approval of the Governor.

Investments.

29—(1) Subject as is provided by the next succeeding section, all capital moneys, however arising, whether before or after the coming into operation of this Act, and whether directed to be invested or not, shall, unless expressly forbidden to be invested, be one common fund, and shall be invested as provided by Section Thirty-one hereof; and any investments made from such common fund shall not be made on account of or belong to any particular estate.

Common fund.
Ibid., s. 32.

(2) The interest payable to the respective estates the moneys of which form the common fund shall be at a rate to be from time to time determined by the Governor, and such rate of interest shall be credited to the respective estates quarterly; namely, on the First day of January, on the First day of April, on the First day of July, and on the First day of October in each year.

(3) On the moneys arising from One estate no rate shall be allowed higher than Five Pounds per centum per annum on an amount not exceeding Three thousand Pounds, and on any amount exceeding Three thousand Pounds not higher than Five Pounds per centum per annum on the First Three thousand Pounds, or higher than Four Pounds per centum per annum on the excess.

(4) Subject to the limitations aforesaid as to the rate of interest, the Governor may from time to time make such regulations as he

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thinks proper as to the payment or non-payment of interest on moneys belonging to any estate, and as to the period from which interest, if allowed, is to be computed.

Special invest-
ments not
guaranteed.
Ibid., s. 33.

30 Moneys expressly directed to be invested otherwise than as mentioned in Section Thirty-one hereof shall not form part of the common fund, and the Public Trustee may invest such moneys in accordance with such direction; but such investments shall not be entitled to the protection afforded by this Act; and any loss or deficiency in respect of any such investments, or of the money received therefrom or realised thereby, shall be borne by the estate to which such moneys belong, or if received and realised would belong.

Investment of
funds.

Ibid., s. 31.
Ibid., s. 34.

31 Unless expressly prohibited, the Public Trustee may invest all capital moneys—

- i. In the Government securities of the United Kingdom or of the Commonwealth or any State thereof, or of any colony or dependency of the United Kingdom, issued under the authority of the Parliament or other legislative authority of the said Kingdom, Commonwealth, State, colony, or dependency respectively, and secured upon the public revenues thereof;
- ii. In debentures issued by the Municipal Corporation of Hobart or Launceston under any law now or hereafter in force, secured upon general or special rates, or upon real estate held in fee-simple free from incumbrances, or upon the rents and profits of real estate held in fee-simple free from incumbrances:

Provided that no greater advance shall be made where the debentures are secured upon real estate than Three-fifths of the value of such real estate; and if the debentures are secured upon rents and profits, then no advances shall be made unless such rents and profits are sufficient to pay Two-thirds more than the annual interest payable in respect of the advance:
- iii. In advances by way of mortgage on the security of any real estate held in fee-simple in this State, and free from incumbrances, to an amount not exceeding Three-fifths of the estimated value of such estate;
- iv. On fixed deposit at interest in any incorporated bank—
 - (a) Carrying on business in Tasmania at the commencement of "The Trustee Act, 1907"; or
 - (b) Thereafter proclaimed by the Governor in the "Gazette" as a bank in which deposits may be made by trustees:
- v. On deposits with the Treasurer or in any State or other savings bank carrying on business in this State.

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Any deficiency to
be made good out
of Consolidated
Revenue.

32—(1) If the common fund is insufficient to meet the lawful claims thereon, the Treasurer shall, without further appropriation than this

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Act, pay such sums out of the Consolidated Revenue as may be necessary to meet the deficiency. A.D. 1912.

(2) No deficiency arising from investments on mortgages of real estate in this State made prior to the coming into operation of this Act, shall be made good as provided by this section, except as follows:—

The Public Trustee may, in his discretion, with respect to the whole or any part of such investments, as he thinks fit, make a charge of Ten Shillings per centum per annum on the moneys invested, to be paid out of the interest arising therefrom; and thereupon any deficiency thereafter arising from any investment in respect of which such charge is made shall be made good as provided by this section.

Accounts.

33 All moneys being part of or accruing out of property placed in the Public Trust office, and all moneys received by the Public Trustee or any other person on account of the said office shall be paid into such bank as the Minister directs to an account called "The Public Trustee's Account," and no moneys shall be withdrawn therefrom, except by cheques signed by the Public Trustee, and countersigned by the Accountant of the Public Trust Office.

Moneys to be paid into bank to credit of "The Public Trustee's Account."
How cheques to be signed.

34 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 presuming 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.

Public Trust Office funds to be Crown property.
Ibid., s. 36.

35—(1) The Public Trustee, in any case where there is to the credit of an estate in the Public Trust Office any real or personal property, whether corpus, capital, or income, but there is no money or not sufficient available to make payments required to be made on account of such estate, whether to the persons entitled thereto or to a share or interest therein or otherwise, may, out of the Public Trustee's Account, advance and pay for or on account of such estate any sum of money which he is authorised or required to pay.

Public Trustee may advance for administration purposes to amount not exceeding value of property.
Ibid., s. 37.

Provided that no greater amount shall be so advanced and paid than the value of the real and personal property.

(2) The sums so advanced, with all interest thereon, shall be a first charge upon real and personal property in the estate, and shall bear interest at the rate of not exceeding Six Pounds per centum per annum.

36 The Public Trustee shall keep a separate account, called "The Public Trust Office Expenses Account," which he shall charge with all salaries and other expenses incurred in the general management of the Public Trust Office, and shall credit with the sums payable out of the several properties in the Public Trust Office for the cost of managing

Public Trust Office Expenses Account to be kept.

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the same, and with all fees and other moneys paid into the Public Trustees Account, but not belonging to or forming part of any such property; and he shall keep a separate and detailed account of the receipts and payments made on account of each separate property in the Public Trust Office, and of all moneys invested on account of each such property.

Advances to
for administration
expenses.
Ibid., s. 38.

37—(1) The Public Trustee may make advances out of moneys 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 Six Pounds per centum per annum.

(2) All interest received under this provision shall be paid into the Public Trust Office Expenses Account, and shall be part of the fund created by this Act.

Balance-sheet.
Ibid., s. 39.

38—(1) 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—

- i. The total receipts and expenditure of or in the Public Trustee's Account during such year, and the property and investments held and made during that period:
- ii. A Profit and Loss Account setting forth the total revenue and expenditure of the Public Trust Office, including advances from the Consolidated Revenue, and losses chargeable to such revenue.

(2) The Public Trustee shall send such balance-sheet to the Auditor-General, who shall forthwith transmit the same, together with such report thereon as he thinks fit, to the Treasurer, by whom it shall forthwith be laid before Parliament if sitting, or if not, then within Ten days after the commencement of the next ensuing session.

Deficiency
payable out of
Consolidated
Revenue.
Ibid., s. 40.

39—(1) If in the Public Trustee's Account the balance at the credit of the Profit and Loss Account is at any time insufficient to meet the charges thereon, the Treasurer may from time to time, without further appropriation than this Act, advance such sums out of the Consolidated Revenue as may be necessary to meet such charges.

(2) Moneys so advanced shall be repaid by the Public Trustee to the Consolidated Revenue so soon as there is in the Public Trustee's Account a balance available for such repayment.

(3) If the balance in the Profit and Loss Account is more than sufficient to meet the charges thereon, the Public Trustee shall invest One-fourth part of such balance, and shall retain the same with the accumulations thereof as an Assurance and Reserve Fund, out of which the deficiency of any subsequent year may be provided, and shall from time to time, at such times as the Treasurer directs, pay the remaining Three-fourths of the excess into the Consolidated Revenue as part thereof.

Public Trustee.

40 The Public Trustee shall pay all salaries and other expenses in the general service of the Public Trust Office as he is authorised to pay by the Treasurer and as are by law payable, and all current expenses and charges incident to his administration under this Act, and all moneys payable to any person entitled thereto.

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Payment of salaries and expenses. *Ibid.*, s. 41.

41— (1) The Treasurer, and any officer of the Treasury authorised by him, shall at all times have 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 Treasurer all such information as the latter requires.

Treasurer to have access to accounts, &c. *Ibid.*, s. 42.

(2) 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 any Department of the Public Service.

Powers of Auditor-General.

(1926) U.L.R. 266.

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, Stock, or Property in Companies.

43— (1) Where the Public Trustee is entitled to shares, stock, or property in any body, whether corporate or not, or in any association, then, notwithstanding any law or provision 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 the Public Trustee incur any further or greater liability in respect of such shares, stock, or property than to the extent of any assets which at the time of the liability he holds as such trustee or in such other representative capacity.

Shares in companies. *Ibid.*, s. 4.

(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.

Miscellaneous.

44 No bond or security shall be required from the Public Trustee upon or in respect of his appointment, by or under this Act or any other Act, as trustee, executor, administrator, guardian, committee, agent, or attorney.

Public Trustee not required to give bond. *Ibid.*, s. 45.

(1926) U.L.R. 266.

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Deposit of wills.
Ibid., s. 46.

45—(1) Any testator may deposit his will in the Public Trust Office for safe custody, or for acceptance or rejection after his death.

(2) If a will is deposited for safe custody, or for the purpose of acceptance or rejection after death, then after the death of the testator the Public Trustee shall, if the will is deposited for safe custody, deliver the same to such person as the testator may have directed in writing, or, in the absence of such direction, to such person as the Public Trustee thinks entitled thereto.

(3) If the will is deposited for acceptance or rejection after the testator's death, notice of such acceptance or rejection shall be given in such manner as the Public Trustee thinks proper.

(4) The Public Trustee may consent to act under any will so deposited as aforesaid.

Acceptance or rejection of appointment of Public Trustee to be notified to interested persons.
Ibid., s. 47.

46—(1) If any appointment of the Public Trustee as trustee, executor, administrator, guardian, committee, agent, or attorney is rejected, notice thereof shall be sent to such persons as the Public Trustee thinks fit.

(2) If any property has become, by virtue of an appointment which is rejected, vested in the Public Trustee, then by virtue of a rejection as aforesaid such property shall cease to be vested in the Public Trustee, and shall become vested in such persons as would have been entitled thereto if such appointment had not been made; and the Public Trustee may execute and do all such instruments and things as may be necessary to give effect to such rejection.

(3) The evidence of acceptance or rejection of any appointment shall be conclusive if such acceptance or rejection is in writing, signed by the Public Trustee.

Public Trustee may make payments of sums of less than £50 without order.
Ibid., s. 48.

47 Where under this or any other Act the Public Trustee is directed to make any payment, upon an order of a court or judge being obtained, to any person entitled thereto, he may make a payment without such order if the amount thereof does not exceed Fifty Pounds; and any payment so made shall be as valid as if authorised by an order of court.

Payment of claims when assets insufficient.
Ibid., s. 49.

48—(1) Where the assets of any testate or intestate estate under administration by the Public Trustee are insufficient to pay the liabilities in full, the assets shall be applied subject to the following priorities:—

- i. In payment of all authorised and legal charges attending the due administration of the estate:
- ii. In payment of funeral charges proportioned, as the Public Trustee thinks proper, to the position of the deceased in his lifetime:
- iii. In payment of medical charges incurred for a period not exceeding Three months next immediately preceding the death of the deceased.

(2) The balance of the assets shall be applied in accordance with the law and practice for the time being in force with respect to the estate

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of a bankrupt, and any surplus shall be applied in terms of the will or the law relating to intestate estates. A.D. 1912.

49—(1) Where a testate or intestate estate is under administration by the Public Trustee, and such administration could be properly closed in a less time than is required by the existing law, the Public Trustee, after giving notice Once each week for Two weeks in at least Two newspapers published or circulating in the locality where the deceased resided or carried on business immediately preceding his decease, or if the deceased died out of this State, then in such a manner as a judge of the Supreme Court directs, requiring creditors and others to send in to the Public Trustee their claims against the said estate, may, at the expiration of the time limited in such notice, being not less than Two months from the first publication thereof, or, in the case of a person dying out of this State, within such time, not being less than Six months, as a judge of the Supreme Court directs, distribute the assets of the deceased, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which the Public Trustee has then notice.

Provision for closing administration of estate after notice.
Ibid., s. 50.

Provided that if any such estate is of less value than Fifty Pounds, it may be distributed or conveyed and assured and dealt with without giving any such notices as aforesaid.

(2) The Public Trustee shall not be liable for the assets, or any part thereof, so distributed to any person of whose claims he had no notice at the time of distribution of the said assets, or a part thereof, as the case may be; but this provision shall not prejudice the rights of any subsequent claimant to establish his right to receive payment from the persons who have been paid by the Public Trustee any distributive shares, or the whole residue of the estate, or, in the case of real property, from the person who may have received a conveyance or assurance thereof, or any part thereof, from the Public Trustee in or towards satisfaction of such distributive shares or residue.

(3) The word "distribute," as to real estate, means "convey and assure the real estate to the person entitled thereto"; and the words "distributed" and "distribution" mean, as to real estate, "conveyed and assured the real estate to the person entitled thereto."

(4) Nothing herein shall prevent the Public Trustee as executor, or as administrator with or without a will annexed, or otherwise, from making distribution under any other law or statute, or prejudice the protection thereby afforded where he makes distribution pursuant to such law or statute.

50—(1) Where 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 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 law or statute to the contrary, be

Certificate under the hand and seal of the Public Trustee to be accepted by all courts, &c., as sufficient proof of death, and that the Public Trustee is administering.
Ibid., s. 51.

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accepted by all courts, officers, and persons, whether acting under any Act or not, as sufficient 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.

(2) Such certificate shall be sufficient for the purpose of registering the Public Trustee as proprietor of any estate or interest in any land under "The Real Property Act," or of any shares, stock, or property in any body or association; and if any land is subject to the provisions of "The Registration Act," such certificate may be registered against such land as in the case of probate or letters of administration, and shall have the same force and effect.

Consular officers in this State to receive residue for residents in foreign countries. *Ibid.*, s. 52.

51 With respect to moneys and personal chattels payable or deliverable by the Public Trustee to the subjects of foreign countries resident in such 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 this State 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.

Any person obtaining order placing property in Public Trust Office to serve same on Public Trustee. *Ibid.*, s. 53.

52 Where any court or judge thereof, except on the application of the Public Trustee, makes any order directing any payment to be made to the Public Trustee or into the Public Trust Office, or makes any order vesting property in the Public Trustee, or appoints the Public Trustee as trustee, executor, administrator, guardian, or committee, it shall be the duty of the person who obtains such order forthwith thereafter to serve upon the Public Trustee or his agent a copy thereof, and to deliver to the Public Trustee or his agent 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 in default thereof such person shall be liable to a fine not exceeding Ten Pounds unless he proves that such default was due to accident or was unavoidable.

Court and registrars to see that orders with particulars of property sent to Public Trustee. *Ibid.*, s. 54.

53 Where any such order is made by a court or the judge thereof, it shall be the duty of the registrar, or deputy-registrar, or clerk, as the case may be, of the court to see that a copy of such order is delivered or posted by registered letter to the Public Trustee or his agent, together with a statement of the property affected by such order, and where such property is situated, or in whose possession it is, so far as such registrar, or deputy-registrar, or clerk can ascertain; and such registrar, or deputy-registrar, or clerk shall, at the time of making an order, ascertain, by such ways and means as he thinks best (and jurisdiction is given hereby for that purpose), the property affected by the order, and where such property is situated, and in whose possession it is.

Existence of any property in the hands of any

54 Where any corporation, association, or person is in possession of any property of a deceased person, or where there is to the credit of

Public Trustee.

any deceased person in the books or accounts or otherwise of any corporation, association, or partnership any property or money, or where under any partnership or association any deceased person is entitled to a share in the assets thereof, or his representatives are entitled to any payment as his share in such assets, or where any deceased person is the registered proprietor of any shares in any corporation or association, or where any person is indebted to any deceased person, 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.

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person or corporation belonging to a deceased person whose estate is being administered by Public Trustee to be disclosed to the Public Trustee.
Ibid., s. 55.

55 Where the Public Trustee is realising the goods, chattels, and effects of any estate administered by him, and such goods, chattels, and effects are not of greater value than Fifty Pounds, and are situated at a distance of more than Ten miles from the usual place of business of a licensed auctioneer, such goods, chattels, and effects may be offered for sale by auction by some person to be appointed by the Public Trustee, and such person for the purpose of such sale shall not require to take out an auctioneer's licence.

Sale of goods by auction.
Ibid., s. 56.

56 Except in so far as by this Act it is expressly otherwise provided, all rights, powers, and remedies conferred by any other statutes or laws upon any court or judge, or upon the Public Trustee or any other person, shall remain unrestricted, and the provisions of this Act shall be read and construed as conferring upon such courts, judges, and the Public Trustee or other persons the rights, powers, and remedies hereby provided by way of addition to and not in derogation of any rights, powers, and remedies conferred by the said statutes or laws, and so that the rights, powers, and remedies conferred by the said statutes or laws, and by this Act, shall be capable of being exercised independently the one of the other, or in aid the one of the other; but, nevertheless, the express provisions of this Act shall not be restricted by the said statutes or laws.

Reservation of existing powers except as otherwise provided.
Ibid., s. 58.

57 Where under this Act notice is required to be given by the Public Trustee, or any officer, servant, or person acting under or *bonâ fide* assuming to act under this Act, it shall be sufficient if such notice is sent by registered letter addressed to the person to whom such notice is to be given at his then known or then last known place of abode or business; and time shall, as from the posting of such registered letter, be reckoned as if such notice had been actually served on such person from the posting of such registered letter.

Service of notices by Public Trustee.
Ibid., s. 59.

58 Neither the Public Trustee nor any officer or servant acting or *bonâ fide* assuming to act under any of the authorities contained in or conferred by this Act shall be personally liable for any act or thing done or omitted, unless the liability arises from actual fraud or crime.

Public Trustee and officers not to be personally liable except in case of fraud or crime.
Ibid., s. 60.

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Persons entitled to same remedy against Public Trustee in corporate capacity as if he were a private person.
Ibid., s. 61.

59 Where any person, by any act or thing done or omitted by the Public Trustee, or any officer, servant, or person acting or *bond fide* assuming to act under this Act, sustains any injury which, if the act or thing done or omitted would have entitled such person to a remedy in respect thereof if the same 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.

Regulations.
Ibid., s. 62.

- 60** The Governor may from time to time make regulations—
- I. For the conduct of the business in the Public Trust Office :
 - II. For determining the duties of the officers, servants, and persons employed therein :
 - III. For the custody of all property placed therein, and the instruments of title relating thereto :
 - IV. For fixing scales of commissions and other charges to be made by the Public Trustee :
 - V. For the receipt and payment of moneys :
 - VI. For keeping, rendering, and auditing accounts :
 - VII. For determining what part of and in what securities moneys shall be invested :
 - VIII. For the safe custody of securities :
 - IX. 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 that account, and any other account that may be deemed necessary in the business of the Public Trust Office :
 - X. For any object or purpose that may be deemed necessary for the efficient administration of this Act, including regulations under Section Twenty-nine hereof.

Certain statutes to be read subject to provisions of this part of Act.
38 Vict. No. 1.
57 Vict. No. 14.
46 Vict. No. 7.
48 Vict. No. 10.
62 Vict. No. 34.
Ibid., s. 64.

61 The following Acts :—

- “The Deceased Persons' Estates Act, 1874,”
“The Probate Act, 1893,”
“The Settled Estates Act, 1882,”
“The Settled Land Act, 1884,” and
“The Trustee Act, 1898 ”—

shall be read and construed as not to contrarily affect any of the express provisions of this part of this Act, and shall be read and construed as subordinate to the provisions of this part of this Act.

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PART II.

UNCLAIMED LANDS.

- 62** In this part of this Act, if not inconsistent with the context—
- “Land” includes all land in this State, and all estates and interests therein, except lands of the Crown in respect of which no contract for the alienation thereof has been made :
- “Owner” means any person having any legal or equitable estate or interest in land ; and includes any infant, idiot, lunatic, or person under any disability having such estate or interest.
- Interpretation.
Ibid., s. 65.

- 63**—(1) If after such inquiries as the Public Trustee institutes he does not thereby ascertain who the owner of land is, and believes that such owner is not in this State, he may adopt the following course :— Publish in One issue of the “Gazette,” and in One newspaper published or circulating in the locality in which the land is situated for Three issues of the paper, at intervals of One week, a notice calling on such owner, within Six months from the date of the notice in the “Gazette,” to establish to the satisfaction of the Public Trustee his title to the land specified in the notice, and stating that if such owner does not within the time limited so establish his title the Public Trustee will exercise the powers and authorities hereinafter granted
- Public Trustee may publish notices calling on owners of land unknown to him to establish their title.
Ibid., s. 66.
- (2) The notice shall be sufficient if it designates the owner, without naming such owner, as “the owner” or “the owners” of the land referred to in the notice.
- (3) If the owner does within such period so establish his title, then all expenses incurred by the Public Trustee shall be refunded to him out of the Consolidated Revenue.

64 If the owner does not within the time so limited establish his title, then the following provisions shall apply :—

If owner fails to establish his title, Public Trustee may notify in “Gazette” that land vested in him, and will be administered under Act.
Ibid., s. 67.

- I. Where the value of the land is One hundred Pounds or more, the Public Trustee may prepare and sign a statement of all the facts within his knowledge as to the ownership and occupation thereof respectively, and file such statement in the Supreme Court, and apply *ex parte* on a summary application to a judge of the Supreme Court for an order that such land be vested in the Public Trustee under this Act :
- II. The judge may require written notice to be served on any person believed to be interested in such land, and may require further evidence, and may make such order in the premises and as to the costs or otherwise as may be just ; and may, if he thinks fit, make an order vesting such land in the Public Trustee :
- III. Notice of the making of any such order shall be published in the “Gazette” :

Public Trustee.

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I Geo. V. No. 47.

Powers of Public
Trustee.
Ibid., s. 68.

- iv. Where the value of the land is less than One hundred Pounds, the Public Trustee may, by notice in the "Gazette," notify that such land is vested in the Public Trustee and will be administered under this Act :
 - v. The value of the land for the purposes of this section shall be the capital value as ascertained for the purposes of "The Land and Income Taxation Act, 1910," or, where not so ascertained, as estimated by the Public Trustee :
 - vi. The "Gazette" notice shall be conclusive evidence, for the purposes of this Act, that the Public Trustee has made due inquiries, and is satisfied that such owner is not in this State, and has not established his title, and that the Public Trustee has complied with the provisions of Section Sixty-three hereof :
- 65** After the publication of the notice in the "Gazette," mentioned in the last preceding section, such land shall become vested in the Public Trustee, and he may, with respect to any such lands—
- i. Recover possession thereof and mesne profits, or damages in respect thereof :
 - ii. Carry out and enforce contracts, and exercise powers in respect thereto :
 - iii. Accept surrenders of tenancies :
 - iv. Let such land or any part thereof for any tenure in possession not exceeding Twenty-one years :
 - v. Where the value of the land ascertained or estimated as aforesaid is less than One hundred Pounds, sell by public auction or private contract, or exchange or partition the same or any part thereof :
 - vi. Keep and maintain buildings and erections thereon in good repair and condition :
 - vii. Erect fences on and around the same, or contribute towards the erection of any dividing-fence :
 - viii. Cut and gather crops thereon :
 - ix. Insure property against loss by fire or accident :
 - x. Pay rent, rates, taxes, and other outgoings in respect thereof :
 - xi. Pay mortgages or charges on such land :
 - xii. Pay all such charges and commissions as may be fixed by the Governor by regulations :
 - xiii. Perform any obligation or duty which by statute or otherwise the owner of the land would be liable to perform :
 - xiv. Do any act or thing requisite to obtaining or perfecting the title to such land :
 - xv. Execute any instrument for the purpose of carrying into effect any of the powers conferred by this Act :
 - xvi. With the sanction of a judge of the Supreme Court, do or omit to do any other act or thing which such judge, on the representation of the Public Trustee, thinks proper.

Public Trustee.

66 As to land referred to in the "Gazette" notice mentioned in Section Sixty-four hereof which is under "The Real Property Act," then upon the production to the Recorder of Titles of such "Gazette" notice, with a description of the land thereby affected, and upon the Public Trustee making application in writing to be registered as the proprietor of such land, the Recorder of Titles shall, without the production of any instrument of title, register the Public Trustee as the proprietor thereof under "The Real Property Act," and as entitled under the provisions of this part of this Act.

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If land under Real Property Act, Public Trustee may be registered as proprietor.
Ibid., s. 70.

67 Where any land or real estate vested in the Public Trustee under this part of this Act is not under "The Real Property Act," the Public Trustee shall be entitled to be registered as the proprietor thereof under "The Real Property Act," on applying to be so registered; and on production of a certificate under his hand and seal of office describing the land or real estate, and certifying that such land or real estate is subject to the provisions of this part of this Act, and without the production of any instrument of title to such land or real estate, the Recorder of Titles shall register the Public Trustee as the proprietor under "The Real Property Act," subject to this part of this Act.

As to land not under Real Property Act.
Ibid., s. 71.

68 Moneys received by the Public Trustee under this part of this Act in respect of land or real estate shall not form part of the common fund; but such moneys may be invested, if the Public Trustee thinks fit, in any of the securities in which the common fund may be invested.

Moneys received by Public Trustee not to form part of common fund, but may be similarly invested.
Ibid., s. 72.

69 All costs, charges, and expenses paid by or payable to the Public Trustee under this part of this Act shall be a first charge upon any land or real estate or money acquired or held thereunder; and, subject thereto, such land, real estate, or money shall be held by the Public Trustee upon trust, subject to this part of this Act, for the owner thereof upon his establishing his title thereto as provided by this part of this Act.

Property to be held by Public Trustee on trust for owner, on his establishing his title thereto.
Ibid., s. 73.

70—(1) Until the owner of land, real estate, or money acquired, administered, or held by the Public Trustee under this part of this Act establishes his title thereto to the satisfaction of a judge of the Supreme Court, the powers and authorities conferred upon the Public Trustee shall continue.

Application to establish title.
Ibid., s. 74.

(2) No application to establish such title shall be made except by petition, a copy of which shall be served upon the Public Trustee Fourteen days prior to the hearing.

(3) Before a judge makes an order under this section, the owner shall pay to the Public Trustee all expenditure, charges, and commission to which the Public Trustee is entitled under this part of this Act, and all costs incurred by the Public Trustee of and incidental to such petition.

(4) On any proceeding under this section the judge may accept and act upon and be satisfied with any evidence, whether the same is

Power of judge as to evidence of ownership.

Public Trustee.

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strictly legal evidence or not, and may make an order declaring a claimant to be the owner of land, real estate, or money, although such claimant may be unable to adduce evidence which would entitle him to judgment in an action of ejectment or a decree in an action for specific performance; and the judge may have regard to the special circumstances of each case in determining the character and sufficiency of the evidence of title adduced.

On order being made declaring the owner, Public Trustee to transfer land and pay money to him.
Ibid., s. 75.

71 On an order being made by a judge declaring who the owner of such land, real estate, or money is, the powers and authorities hereby conferred on the Public Trustee shall cease, and the Public Trustee shall transfer any land or real estate, or pay to such owner any money, held by him in trust for such owner.

If within Twenty years no person establishes his title, then land, real estate, or money to become property of the Crown.
Ibid., s. 76.

72 If within Twenty years from the date of the notice in the "Gazette" referred to in Section Sixty-four hereof, no person establishes to the satisfaction of a judge of the Supreme Court his title to such land or real estate, or the moneys arising therefrom, the estate or interest of such person in such land, real estate, or money shall become the property of the Crown.

Saving of Crown rights.
Ibid., s. 77.

73 Nothing in this part of this Act shall affect the Crown as to its property or rights.

Saving as to land acquired under statutes of limitation.
Ibid., s. 78.

74 Notwithstanding this part of this Act, no person who has acquired or may hereafter acquire title to land by or under statutes of limitation shall be deprived of such title.

Land, &c., becoming property of the Crown may be vested in local authority.

75—(1) Where under this part of this Act any land, real estate, or money becomes the property of the Crown, then the Governor by order-in-council may transfer the same to any local authority, or to the corporation controlled by any local authority, for such purposes and with such powers as are specified in such order.

(2) "Local authority," for the purposes of this section, means the council, marine board, or harbour trust of a city, municipality, or district, within which the land or real estate to which the aforesaid order relates is situated.

Instruments executed by Public Trustee hereunder.
Ibid., s. 80.

76 When an instrument is executed by the Public Trustee, purporting to be made in exercise of the powers conferred by this part of this Act, no court, officer, or person shall be concerned to see or inquire whether such powers had or had not become exercisable, or be responsible for the exercise or the improper exercise of such powers.

Recovery of charges, &c., of Public Trustee.
Ibid., s. 81.

77 If in administering any of the powers and authorities contained in this part of this Act the Public Trustee is unable to recover from any person or property all his charges, commissions, and expenses, then the deficiency shall be made good out of the Consolidated Revenue.

Public Trustee.

78 The Public Trustee shall not be responsible for the exercise or the non-exercise of any of the powers and authorities contained in this part of this Act unless the same arise from his actual wilful default ; nor shall he be obliged to take any steps or proceedings under Sections Sixty-three, Sixty-four, and Sixty-five hereof.

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Public Trustee only responsible for wilful default. *Ibid.*, s. 82.

79 The power to make regulations conferred by Part I. of this Act shall extend and apply to this part of this Act.

Regulations. *Ibid.*, s. 83.

80 Whenever in cases under this part of this Act the title of the Public Trustee is defective through the non-existence or non-issue of any instrument of title which ought to be issued, then the Public Trustee may require the same to be issued to him, and the proper officer shall upon such request issue the same to him accordingly.

Public Trustee may require issue of instruments of title. *Ibid.*, s. 84.

81 The Public Trustee shall, within Sixty days after the Thirty-first day of March, One thousand nine hundred and fifteen, and thereafter within Sixty days after the Thirty-first day of March in every Third year, prepare a list showing all land which has become vested in him under this part of this Act during the triennial period terminating on every such Thirty-first day of March, and the names of any person or persons believed by the Public Trustee to have any estate or interest therein ; and the Public Trustee shall transmit such list to the Treasurer, who shall forthwith cause the same to be published in the "Gazette," and to be laid before Parliament if sitting, or if not, then within Ten days after the commencement of the next ensuing session.

Public Trustee to make returns of land vested. *Ibid.*, s. 85.**PART III.****UNCLAIMED PROPERTY.**

82 When the owner of any real or personal property is absent from this State, and has no agent in this State with authority to take possession of and administer such property, or when it is not known who the owner of such property is, or when it is not known where he is, or when it is not known whether he is alive or dead, or when he is dead and has left executors or administrators who are dead or whose whereabouts are unknown, a judge of the Supreme Court may, on the application *ex parte* of the Public Trustee, and on being satisfied that the exercise of the powers hereinafter mentioned is advisable in the interests of the owner of the property or in the interests of any other person, make an order, on such terms and conditions as such judge thinks fit, authorising the Public Trustee to exercise in respect of such property all or any of the following powers; that is to say:—

Powers of Public Trustee in respect to uncared for property. *Ibid.*, s. 87.

- i. To take possession of the said property :
- ii. To bring any action or other proceeding relating to the said property, and to defend, confess, or submit to judgment in

Public Trustee.

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- any or all actions, claims, demands and proceedings touching such property :
- III. To sell the said property or any part thereof :
 - IV. To lease the said property or any part thereof for a term not exceeding Twenty-one years :
 - V. To receive, sue for, and recover any moneys owing to the owner of the said property :
 - VI. To insure any buildings or goods against loss by fire :
 - VII. To pay rates, taxes, and other outgoings payable in respect of such property :
 - VIII. To pay, out of moneys received by him in the exercise of any of the foregoing powers, any debts owing by the owner of the said property :
 - IX. To apply moneys received by him in the exercise of any of the foregoing powers in the maintenance of the wife, husband, or children of the owner of the said property :
 - X. To execute in his own name and on behalf of the said owner all deeds and other instruments which may be necessary for any of the purposes aforesaid.

Expenses incurred by Public Trustee to be a charge upon property.
Ibid., s. 88.

83 All expenses incurred by the Public Trustee in the execution of the powers conferred on him by this part of this Act shall be a charge upon the said property, and shall bear interest at Five Pounds per centum per annum, and such charge shall come next in priority to any mortgage or charge to which the said property is subject when he takes possession of the same.

Public Trustee to advertise notice of intention to exercise powers.
Ibid., s. 89.

84 On taking possession of any property under this part of this Act the Public Trustee shall publish in the "Gazette," and in some newspaper circulating in the district in which the property is situated, a notice of his intention to exercise the powers conferred on him by virtue of this part of this Act.

Moneys to be held in trust for owner.
Ibid., s. 90.

85 All moneys received by the Public Trustee in the exercise of the powers conferred on him by virtue of this part of this Act shall, after payment thereof of all moneys authorised to be expended by him, be held by him in trust for the owner of the said property.

Powers of Public Trustee as to sale or lease of land.
Ibid., s. 91.

86 In respect of any lease, sale, or other disposition of the said property made by the Public Trustee in pursuance of this part of this Act, the Public Trustee shall have the same powers as if he were the owner of the said land, and all deeds and other documents executed by him in pursuance of this part of this Act shall be registered and have effect in all respects as if executed by the owner of the said property.

Rescission of order on application of owner, &c.
Ibid., s. 92.

87 The owner of any property in respect of which any order has been so made, or any person having any interest in the said property or in any part thereof, may at any time after the making of the order, on notice to the Public Trustee, make application to a judge of the Supreme Court to rescind the said order, and the same may thereupon

Public Trustee.

be rescinded accordingly on such terms as the judge thinks fit ; but no such rescission shall affect any charge acquired by the Public Trustee under this part of this Act, or the validity of any act or thing done by the Public Trustee during the continuance of the said order and in pursuance thereof. A.D. 1912.

88 No order made under this part of this Act, and nothing done in pursuance of any such order, shall be or become invalid or inoperative merely because it has been made or done under a mistake of fact, or because the owner of the property is dead at the time when the order is made or has died since the making thereof, or because of any disposition of the said property made by the owner thereof during the subsistence of the order. Order not affected by mistake of fact.

SCHEDULE.

Date and Number of Act.	Title of Act.	Extent of Repeal.
17 Vict. No. 4	"An Act for the Better Preservation and Management of the Estates of Deceased Persons in certain cases"	The whole Act
17 Vict. No. 25	"An Act to amend the Act of Council of this Island, intituled 'An Act for the Better Preservation and Management of the Estates of Deceased Persons in certain cases'"	The whole Act
25 Vict. No. 6	"An Act to amend the Act, intituled 'An Act for the Better Preservation and Management of the Estates of Deceased Persons in certain cases'"	The whole Act
38 Vict. No. 1	"The Deceased Persons' Estates Act, 1874"	Sections Eighteen to Twenty-one, both inclusive

