

TASMANIA.

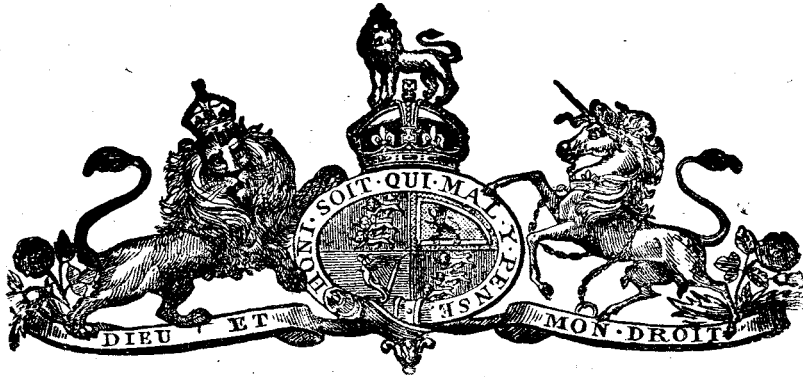
THE PUBLIC TRUST OFFICE ACT, 1919.

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T A S M A N I A



1919.

ANNO DECIMO

GEORGII V. REGIS.

No. 38.



AN ACT to amend "The Public Trust Office Act, 1912," and for other purposes. ^{A.D.} 1919.
[24 December, 1919.]

(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 be cited as "The Public Trust Office Act, 1919," and shall be incorporated and read as one with "The Public Trust Office Act, 1912" (hereinafter called the Principal Act). Short title and incorporation with 3 Geo. V. No. 26.

2 Section Four of the Principal Act is hereby amended by inserting after the definition "land" the following definition:—
"Minister" means the Attorney-General or other responsible Minister of the Crown charged for the time being with the administration of this Act." Amendment of Section 4 of Principal Act. Definition of "Minister."

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Amendment of
Section 5 of
Principal Act.Officers to make
declaration of
secrecy.Insertion of new
Section 7a after
Section 7 of
Principal Act.Duties of
Deputy Public
Trustee.Cf. No. 17, 1912,
N.Z., s. 2.Power to act not
to be questioned.Delegation by
Public Trustee.

3 Section Five of the Principal Act is hereby amended, as from the commencement of the Principal Act—

i. By inserting immediately after the words "Public Trustee," occurring at the end of the Second line thereof, the words "and a Deputy Public Trustee"; and

ii. By inserting the following words at the end of the section:—

"Every member of the staff of the Public Trust Office, and every agent of the Public Trustee, shall be bound to secrecy by declaration in the prescribed form."

4 After Section Seven of the Principal Act the following section is inserted:—

"**7a**—(1) With respect to a Deputy Public Trustee the following provisions shall apply:—

i. He shall act during the illness, suspension, or absence of the Public Trustee, or while the office of Public Trustee for any reason remains vacant, and while so acting shall have all the powers and perform all the duties of the Public Trustee:

ii. He may also act under authority delegated in that behalf by the Public Trustee, and while so acting he shall act in the name and on behalf of the Public Trustee:

iii. The fact that he so acts shall be sufficient evidence of his authority so to do, and no person shall be concerned to inquire whether any occasion has arisen requiring or authorising him so to do, or be affected by notice or by the fact that no such occasion has arisen:

iv. He shall be subject to the direction and control of the Public Trustee:

v. All deeds and instruments which, if executed by the Public Trustee, would be signed by him and sealed with his seal of office shall, when executed by the Deputy Public Trustee, be signed thus:—

'The Public Trustee,'

By A.B.,

Deputy Public Trustee,

and be sealed with the Public Trustee's seal of office.

(2) The Public Trustee may from time to time, by writing under his hand, delegate to the Deputy Public Trustee all or any of his powers or functions under this Act (except this power of delegation).

Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Public Trustee."

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5 After Section Nine of the Principal Act, the following sections are inserted, and shall be deemed to have been so inserted as from the commencement of the Principal Act :—

Additional Powers and Functions of the Public Trustee.

“**9a** The power given to the Public Trustee in this Act to act as agent shall be deemed to have included power to act as agent for the investment of money in the common fund for such period and on such terms and conditions as, consistently with the regulations for the time being in force, are agreed on between the Public Trustee and the principal.

“**9b** The Public Trustee, with his consent, and for such remuneration as is prescribed, or as, in the absence of any prescription, is agreed on, may be appointed Receiver under any Act or instrument providing for the appointment of a Receiver, or in the exercise of the general jurisdiction of the Supreme Court.”

6—(1) After Section Ten of the Principal Act, the following section is inserted :—

“**10a**—(1) Whenever under the provisions of Section Ten of this Act any executor or administrator with will annexed appoints the Public Trustee executor or such administrator, the Public Trustee shall, by force of such appointment, be also sole trustee if such executor or administrator were trustee, or if there were no trustee appointed by the trust instrument or in existence.

(2) Any executor may pay the legacy or share due to any infant into the Public Trust Office, and by writing direct the Public Trustee to account to such infant according to the provisions of the trust instrument; and such writing shall vest in the Public Trustee all the powers of such executor or the trustee of such instrument (subject to the special provisions of this Act) in regard to such legacy or share.

(3) Such executor or administrator shall furnish the Public Trustee with a copy of the trust instrument, and the Public Trustee shall act thereon.

(4) ‘Executor’ herein includes administrator with or without the will annexed for general, special, or limited purposes; also any trustee.”

(2) The provision of Subsection (1) of Section **10a** applies to all past appointments under the Principal Act.

The provision of Subsection (2) of Section **10a** extends to existing instruments and to past transactions.

7 After Section **10a** of the Principal Act the following Section is inserted :—

“**10b**—(1) Where the trustees of a trust estate are empowered to delegate all or any of their powers and functions to any person, they may delegate the same to the Public Trustee with his consent, and in such case the Public Trustee may exercise all the powers and functions so delegated.

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Insertion of
Two new Sections
9a and 9b after
Section 9 of
Principal Act.

Public Trustee
may act as agent
for investment of
money in common
fund.

Cf. No. 19, 1913,
N.Z., ss. 16 and 31.

Public Trustee
may be appointed
Receiver.

Insertion of new
Section 10a after
Section 10 of
Principal Act.

Section 10 of
Principal Act
modified and
extended.

Ibid., s. 17.

Public Trustee
may receive from
private executors
legacies of minors.

Insertion of new
Section 10b after
Section 10a of
Principal Act.

Trustees may
delegate powers
to Public Trustee

Ibid., s. 22.

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(2) The charges of the Public Trustee shall be such as are prescribed, or, in the absence of any prescription, are agreed on by the delegating trustees and the Public Trustee.

(3) The term 'trustees' includes executors, administrators, or other persons acting in a fiduciary capacity."

Insertion of new Section 11a after Section 11 of Principal Act.

Public Trustee may, in lieu of obtaining probate, file an election to administer testate estate not exceeding £400 in value.

Ibid. s. 18.

8 After Section Eleven of the Principal Act, the following section is inserted:—

"**11a**—(1) Where any person has heretofore died or hereafter dies testate, 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 Four hundred Pounds, and no person has obtained probate, the Public Trustee may in all cases where he is entitled to obtain probate, in lieu of obtaining probate, file in the office of the Supreme Court at Hobart an election under his hand and seal setting forth the name, residence, and occupation (as far as then known to the Public Trustee) of the testator at the date of his death, and the property of the testator as then known, and the date of his death, and stating that after due inquiries he believes that the document annexed to such election is the testator's last will, and that such will has been validly executed according to the law governing the execution of wills, and electing to administer the property according to the provisions thereof.

(2) On such election being filed the Public Trustee shall be deemed to be executor of the whole property of the testator in like manner in all respects as if probate had been duly 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 rightfully 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 Six hundred Pounds, the Public Trustee shall, as soon as practicable thereafter, file in the said office of the Supreme Court a memorandum under his hand stating the fact, and proceed in the ordinary manner to obtain probate.

(5) In this section 'will' includes all codicils thereto, and 'probate' includes letters of administration with will annexed, whether for general, limited, or special purposes."

Amendment of Section 12 of Principal Act. Cf. No. 19, 1913, N.Z., s. 19.

9 Section Twelve of the Principal Act is hereby amended as follows:—

- I. By omitting the words "Two hundred and fifty Pounds from Subsection (1) thereof, and substituting therefor the words "Four hundred Pounds":
- II. By omitting the words "or obtaining an order to administer," in line Seven of Subsection (1) thereof:
- III. By omitting the words "Four hundred Pounds" from Subsection (4) thereof, and substituting therefor the words "Six hundred Pounds":

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iv. By omitting the words "an order for the," occurring in line Five of Subsection (4) thereof :

v. By adding the Two following subsections thereto :—

"(5) In this section "letters of administration" includes letters of administration for general, limited, or special purposes."

"(6) A copy of any election made under this section or under Section **11a** of this Act, certified as a correct copy under the seal of the Supreme Court, shall be equivalent to an exemplification for all purposes, and no fee under the Supreme Court Rules shall be payable in respect thereof except a sealing fee of Five Shillings."

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Interpretation of "Letters of Administration."

Certified copy election equivalent to exemplification only, fee Five Shillings. Cf. *Ibid*, s. 20 (2).

10 After Section Fifteen of the Principal Act, the following sections are inserted, and the provisions thereof relating to advisory trustees and custodian trustees shall apply to trusts in existence at the passing of this Act, as well as to trusts hereafter created :—

Insertion of new Sections 15a to 15i after Section 15 of Principal Act.

"**15a**—(1) When any person who at the time of his death was domiciled or had any estate in this State dies, whether such death occurred within or outside this State, and whether before or after the commencement of this Act, the Court may, on the application of the Public Trustee, grant to him administration of the estate of such person in any of the following cases :—

Administration in other cases.

Cf. Q. 1915, 6 Geo. V. No. 14, s. 34.

i. Where such person leaves no executor willing and capable of acting in the execution of his will resident within the jurisdiction :

ii. Where every executor or administrator has died ;

iii. Where the estate or any portion thereof is liable to waste, and the executor or administrator or next of kin—

(a) Is absent from the locality of the estate ; or

(b) Is not known ; or

(c) Has not been found ; or

(d) Requests the Public Trustee in writing to apply for administration :

iv. Where part of an estate already partly administered is unadministered, owing to the absence from the State or incapacity of the executor or administrator, or the executor or administrator has become insolvent.

In such case any absent or insolvent executor or administrator may be discharged by the Court.

"**15 b**—(1) In any case where a fund is raised by public or private subscriptions for the benefit or relief of any person or class of persons, the following provisions shall apply :—

Administration by Public Trustee of benefit funds. Cf. No. 17, 1912, N.Z., s. 4.

i. The fund may be placed in the Public Trust Office to be administered by the Public Trustee and to be invested in the common fund :

ii. The Public Trustee may recognise as a committee any persons whom he believes to have been appointed or authorised in that capacity by a substantial number of the subscribers :

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- III. The Public Trustee, after conferring with the committee, may apply to the Supreme Court for directions as to the administration of the fund, and for that purpose shall submit a scheme :
- IV. The Supreme Court may approve the scheme, with or without modifications, as the Court thinks fit :
- V. The Public Trustee shall administer the fund in accordance with the scheme so approved :
- VI. On the application of the Attorney-General, or of the Public Trustee, or of any member of the committee, or of any person claiming an interest in the fund, the Court may at any time vary the scheme or give directions on any point or question relating to the scheme or the fund :
- VII. The Public Trustee shall obey all such directions.

(2) This section shall apply to funds heretofore raised as aforesaid as well as to funds hereafter so raised, and to those funds raised as aforesaid which at the commencement of this Act are being administered in the Public Trust Office."

Advisory Trustees.

Public Trustee
may act with
advisory trustee
No. 19, 1913,
N.Z., s. 4.

"**15c**—(1) In the administration of any trust estate as trustee thereof, the Public Trustee may act with an advisory trustee, or advisory trustees, to the extent hereinafter provided. Where in this Act 'advisory trustees' are referred to, these words mean and include 'advisory trustee' in cases where there is only one advisory trustee.

- (2) An advisory trustee, or advisory trustees, may be appointed—
- I. By the testator, settlor, or other creator of the trust in the instrument creating the trust :
 - II. By order of the Court made on the application of any beneficiary or of any person on whose application the Court would have power to appoint a new trustee :
 - III. By any person having power to appoint a new trustee.

Powers of Public
Trustee so acting.

(3) Where the Public Trustee acts with advisory trustees the trust property shall be vested in the Public Trustee, and he shall have the sole management and administration of the estate and its trusts as fully and effectually as if he were the sole trustee :

Provided as follows :—

- I. He may consult the advisory trustees on any matter relating to the trusts or the estate :
- II. The advisory trustees may advise the Public Trustee on any matter relating to the trusts or the estate.

(4) In case of difference between the Public Trustee and the advisory trustees, either the Public Trustee or the advisory trustees may submit the matter in dispute in a summary manner to a judge of the Supreme Court in chambers, whose decision thereon shall be final, and shall bind both the Public Trustee and the advisory trustees ; and the judge may make such order as to costs as he considers proper.

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(5) No person dealing with the Public Trustee shall be concerned to inquire as to the concurrence or otherwise of the advisory trustees, or be affected by notice of the fact that the advisory trustees have not concurred. A.D. 1919.

(6) The power of appointing a new advisory trustee when exercisable by the continuing advisory trustees shall be exercised by them alone, but the Public Trustee shall have the same power of applying to the Court for the appointment of a new advisory trustee as is possessed by any other person.

(7) Subject to the provisions of the trust instrument (if any), the Governor may from time to time make regulations providing for the remuneration of advisory trustees out of the estate."

Custodian Trustee.

"**15d** In connection with any trust estate in which there are managing trustees (meaning the trustees who would be entitled to act if there were no custodian trustee), the Public Trustee may be appointed custodian trustee in the same manner, *mutatis mutandis*, as is provided by Section **15c** hereof in the case of advisory trustees. Where in this Act 'managing trustees' are referred to, those words mean and include 'managing trustee' in cases where there is only one managing trustee." Public Trustee may be appointed custodian trustee. *Ibid.*, s. 5.

"**15e** Where the Public Trustee is appointed custodian trustee the following provisions shall apply:—

- i. The trust property shall be vested in him as if he were sole trustee, and for that purpose vesting-orders may, where necessary, be made under 'The Trustee Act, 1898':
- ii. The management of the trust property and the exercise of all powers and discretions exercisable by the managing trustees shall remain vested in the managing trustees as fully and effectually as if there were no custodian trustee:
- iii. The sole function of the Public Trustee shall be to get in and hold the trust property, and invest its funds, and dispose of the assets, as the managing trustees in writing direct for which purpose the Public Trustee shall execute all such documents and perform all such acts as the managing trustees in writing direct:
- iv. The direction referred to in the last preceding paragraph hereof means the direction of the majority of the managing trustees where there are more than one:
- v. The Public Trustee shall not be liable for acting on any such direction—

Function and powers of the Public Trustee so acting. *Ibid.*, s. 6, N.Z. 62 Vict. No. 34.

Provided that if he is of opinion that any such direction conflicts with the trusts or the law, or exposes him to any liability, or is otherwise objectionable, he may submit the matter in a summary manner to a judge of the Supreme Court in chambers, whose decision thereon shall be final, and shall bind both the Public Trustee and the managing trustees; and the judge may make such order as to costs as he thinks proper:

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VI. The Public Trustee, acting as custodian trustee, shall not be liable for any act or default on the part of any of the managing trustees :

VII. All actions and proceedings touching or concerning the trust property shall be brought or defended in the name of the Public Trustee at the written direction of the managing trustees, and the Public Trustee shall not be liable for the costs thereof apart from the estate :

VIII. No person dealing with the Public Trustee shall be concerned to inquire as to the concurrence or otherwise of the managing trustees, or be affected by notice of the fact that the managing trustees have not concurred."

Power of Court to terminate custodian trusteeship.

Ibid., s. 7.

"**15f** On the application of the custodian trustee or of any of the managing trustees, or of any beneficiary, and on satisfactory proof that it is the general wish of the beneficiaries, or that on other grounds it is expedient to terminate the custodian trusteeship, the Court may make an order for that purpose, and may also make such vesting-orders and give such directions as under the circumstances seem to the Court to be necessary or expedient."

Construction of Subsection (6) of Section 15c.

Ibid., s. 8.

"**15g** The provisions of Subsection Six of Section **15c** hereof (with respect to the appointment of a new advisory trustee) shall, *mutatis mutandis*, apply to the appointment of a new managing trustee."

Remuneration of Public Trustee.

Ibid., s. 9.

"**15h** The Public Trustee, acting as custodian trustee, shall be entitled to such remuneration as is prescribed or as, in the absence of any prescription, is agreed on with the Public Trustee."

General as to Advisory Trustees and Custodian Trustee.

Trustee includes executor and administrator also "committee" of lunatic's estate, &c.

Ibid., s. 10.

"**15i**—(1) In Sections **15c** to **15h** hereof, unless inconsistent with the context, 'trustee' includes 'executor' and 'administrator,' also 'committee' of the estate of a lunatic.

(2) In computing the number of managing trustees who may lawfully act or be appointed, neither advisory trustees nor custodian trustee shall be included."

Number of trustees.

Insertion of new Section 17a after Section 17 of Principal Act.

11 After Section Seventeen of the Principal Act, the following section is inserted :—

Protection of Persons under Disability and Others in Certain Cases.

Moneys or damages received or awarded in any cause or matter in any Court on behalf of infant or person of unsound mind to be paid to and disbursed by Public Trustee.

Ibid., s. 13.

"**17a**—(1) In any cause or matter in any Court in which money or damages is or are claimed by or on behalf of an infant or a person of unsound mind, no moneys or damages received or awarded in any such cause or matter, whether by compromise, payment into Court, or otherwise, before or after the trial, shall be paid to the next friend of the plaintiff or to the plaintiff's solicitor.

(2) All moneys or damages so received or awarded shall, unless the appropriate Court otherwise orders, be paid to the Public Trustee, and shall, subject to any special or general directions of

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the appropriate Court, be held and applied by him in such manner as he thinks fit for the maintenance and education or otherwise for the benefit of the persons entitled thereto. A.D. 1919.

(3) The said money shall form part of the common fund of the Public Trust Office and bear interest in accordance with the regulations.

(4) A certificate under the hand and seal of the Public Trustee, showing the receipt of the said money, shall, in any Court or proceedings whatsoever, be sufficient evidence of the facts therein stated without any further proof.

(5) Nothing in this section shall prejudice the lien of a solicitor for his costs.

(6) The plaintiff's costs in any such cause or matter or incident to the claim therein or consequent thereon shall be taxed as between party and party and as between solicitor and client, and the taxing officer shall certify the respective amounts thereof and the difference (if any). No costs other than those so certified shall be payable to the plaintiff's solicitor.

(7) The Public Trustee shall receive notice of such taxation, and shall be entitled to appear and be heard thereon."

12 After Section Eighteen of the Principal Act, the following section is inserted, and shall be deemed to have been so inserted as from the commencement of that Act:—

"**18**—(1) Where an intestate estate is in the Public Trust Office, and there are infants entitled, the following special provisions shall apply in the case of each infant's share:—

- I. The Public Trustee may out of the infant's share make periodical or other payments towards the maintenance, education, or advancement of the infant, not exceeding Eighty Pounds in any one year:
- II. The payments authorised by this section may be made by the Public Trustee to such person and in such manner as he thinks fit without seeing to the application thereof or being responsible for the non-application thereof.

(2) The powers by this section conferred upon the Public Trustee may be exercised without obtaining any order of a judge of the Supreme Court, and are irrespective of and in addition to all other powers exercisable by him.

(3) The Supreme Court may in any case authorise the making of payments for any of the purposes aforesaid in excess of the limit hereinbefore prescribed."

Special Powers of Public Trustee.

13—(1) Subsection (1) of Section Twenty-four of the Principal Act is hereby amended by inserting immediately after Paragraph XVI. the following paragraphs (conferring further powers upon the Public Trustee), namely:—

"XVII. From time to time expend portion of the capital of any estate under his administration on the improve-

Insertion of new Section 18a after Section 18 of Principal Act.

Payments out of infant's share of intestate estate for the infant's maintenance, &c. Cf. No. 17, 1912, N.Z., s. 5.

Amendment of Section 24 of Principal Act. Additional general powers of Public Trustee. Cf. No. 19, 1913, N.Z., s. 21.

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ment or development thereof, and may expend either capital or income of any estate in the preservation, upkeep, or cultivation thereof; and for any such purpose may advance money out of office funds on the security of any such estate:

Provided that where the sum to be expended exceeds Five hundred Pounds the consent of the Supreme Court or a judge thereof shall be necessary:

- xviii. From time to time postpone the conversion of any real or personal estate for such time as he thinks fit:
- xix. On the sale (whether under any power of sale as mortgagee or otherwise) of any real or leasehold estate subdivide the same into allotments, and for that purpose construct and dedicate all such roads, footpaths, and streets, and do all such other things, as he thinks necessary, or as are required by any law or by-law relating to subdivisions:
- xx. Where in connection with any estate he is lawfully holding any shares in a company or other institution, and on a reconstruction thereof or otherwise the shareholders thereof are offered an option to take up additional shares, he may on behalf of the estate take up such additional shares or any of them. For such purpose he may apply funds belonging to the estate, or may, out of office funds, advance on the security of the estate such sums as may be necessary. In this paragraph 'shares' includes debentures and debenture stock:
- xxi. In exercising any power of sale conferred by this Act or by any instrument, he may give a lease of the property, with an optional or compulsory purchasing clause:
- xxii. Surrender or concur in surrendering any lease, and accept a new lease:
- xxiii. Appropriate any part of the estate in or towards satisfaction of any legacy or share (whether settled, contingent, or absolute) to which any person is entitled, therein, and may for that purpose value the whole or any part of the estate in such manner as he thinks fit:

Provided that before any such appropriation is effectual, notice thereof shall be given to all persons *sui juris* who are interested in such appropriation, any of whom may within One month after receipt of such notice apply to the Supreme Court to vary the same, and such appropriation shall be conclusive save as otherwise directed by the Court:

Provided further that where the person interested is out of the jurisdiction the said period of One month may be extended by the Supreme Court, or a judge thereof, for such period as the Court or a judge thinks fit, on the application of the Public Trustee or of any person interested."

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(2) Subsection (1) of Section Twenty-four of the Principal Act is hereby further amended by omitting the words "Five hundred Pounds," occurring in the Third line of the proviso thereto, and substituting therefor the words "One thousand Pounds."

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Procedure.

14 After Section Twenty-seven of the Principal Act the following sections are inserted:—

27a—(1) The Public Trustee may, in manner hereinafter provided, and without judicial proceedings, take the opinion of the Supreme Court upon any question arising in the course of his duties.

(2) Any such question shall be submitted to a judge of such Court in such manner and at such time as he may direct, and shall be accompanied by such statement of facts, documents, and other information as he may require; and the Public Trustee or anyone authorised by him shall, if the judge so desires, attend upon him at such time and place as the judge may appoint.

(3) The judge may, before giving his opinion, require the attendance of, or communication with, any person interested in the estate as trustee or beneficiary, but no such person shall have a right to be heard unless the judge otherwise directs.

(4) The judge shall give his opinion to the Public Trustee, and the Public Trustee shall act in accordance with such opinion, and shall, upon the request in writing of any such interested person, communicate to him the effect of such opinion.

(5) The Public Trustee in acting on such opinion shall be fully indemnified."

Insertion of Five new Sections 27a, 27b, 27c, 27d, 27e after Section 27 of Principal Act.

Public Trustee may take opinion of Court upon any question arising in course of his duties.

Ibid., s. 24.

27b—(1) Where the Public Trustee is administering any estate, and such estate or any part thereof cannot be distributed by reason of the fact that it is not known to the Public Trustee whether any person entitled thereto is alive or dead or where that person is, the Public Trustee may apply to a judge of the Supreme Court by petition for directions in accordance with this section.

Public Trustee may apply to judge for directions as to distribution of estate.

Ibid., s. 25.

(2) On consideration of such petition the judge shall order what advertisements are to be issued, calling upon such person to send in his claim within a time to be specified in such order.

(3) Upon proof by affidavit by or on behalf of the Public Trustee that such order has been complied with, and that such person has not sent in any claim, such judge, or any other judge of the said Court shall, by further order, authorise the Public Trustee to distribute such estate or part thereof, disregarding the claims of such person, and all persons claiming by, through, or under him, by derivative title, or otherwise howsoever.

(4) Such further order shall exonerate the Public Trustee from any further liability in respect to such estate or part thereof so dealt with.

(5) But nothing herein shall prejudice or affect the right of such person or persons to follow the estate or any part thereof into the hands of the persons who have received the same pursuant to such distribution.

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(6) The rule of evidence presuming death after Seven years' absence shall not apply to proceedings under this section.

(7) The judge may in such further order direct that the order shall not be acted on for such period, not exceeding a year from the date of the making thereof, as he thinks fit, and may direct that the order shall during that period be advertised in such manner and form as he thinks fit.

(8) The judge shall give directions as to how the costs of and incidental to such orders and advertising shall be borne.

(9) Provided, however, that nothing herein shall prejudice the right of the Public Trustee (if he so desires) to distribute under any other law or statutory provision, or prejudice the protection thereby afforded when he makes distribution pursuant to such law or provision."

Public Trustee may act on written statements or declarations as to matters of pedigree or relationship
Ibid., s. 26.

"**27c** The Public Trustee, acting in good faith, shall not in the case of any estate the net value of which does not exceed Five hundred Pounds be liable for accepting as correct and acting upon the faith of any written statement or statutory declaration by any person, in or out of this State, whom he believes to be trustworthy, as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the title to any estate or any part thereof may depend."

Public Trustee may take professional advice and act on credible information as to matters of fact.
Ibid., s. 27.

"**27d** Subject to this Act, and to the terms of any particular trust, the Public Trustee may in his administration of any estate or the performance of any duty take and use professional advice and assistance in regard to any matter, and may act on credible information (though less than legal evidence) as to matters of fact."

Public Trustee may require evidence of identity.
Ibid., s. 45.

"**27e** The Public Trustee may at any time require a statutory declaration or other sufficient evidence that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until such declaration or evidence is produced."

Amendment of Section 29 of Principal Act, by repealing Subsection (3) and substituting new subsection.

15 Subsection Three of Section Twenty-nine of the Principal Act is hereby repealed, and the following subsection substituted therefor:—

Cf. No. 17, 1912, N.Z., s. 8.

"(3) On the moneys arising from One estate the rate of interest shall not exceed Five Pounds per centum per annum on the first Six thousand Pounds and Four and a quarter Pounds per centum per annum on the excess."

Amendment of Section 31 of Principal Act.
Cf. No. 19, 1913, N.Z., s. 33.

16 Section Thirty-one of the Principal Act is hereby amended, as from the commencement thereof, by adding the following proviso at the end thereof:—

" Provided, however that a power or direction to invest money in some only of the foregoing classes of security, with or without a power or direction to invest in securities not included in any of the foregoing classes, shall not be deemed to be an express prohibition within the meaning of the foregoing provisions, and such money shall form part of the common fund of the Public Trust Office unless expressly directed to the contrary."

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17 After Section Thirty-seven of the Principal Act, the following section is inserted, and shall be deemed to have been so inserted as from the commencement of the Principal Act :—

“ **37a**—(1) Where an estate is in the Public Trust Office and any person entitled to a share of that estate desires an advance against his share, the Public Trustee may, out of the Public Trustee's Account, make advances to that person not exceeding in the whole one-half of the value of the share as estimated by the Public Trustee.

(2) All such advances, with interest thereon at such rate as is agreed on, not exceeding Six per centum per annum, shall by force of this Act and without any instrument of assignment be a first charge on the share against which the advances are made.

(3) A certificate under the hand and seal of the Public Trustee stating the amount owing for advances and interest on any specified date, the person to whom the advances were made, and the share against which they were made shall, according to its tenor, be sufficient evidence of the facts until the contrary is proved.”

18 After Section Forty-one of the Principal Act, the following section is inserted :—

“ **41a** In the case of any trust estate administered by the Public Trustee—

- i. A solicitor or accountant authorised in writing by a beneficiary shall be entitled as of right to examine at any reasonable time the accounts of that estate, and for that purpose shall have access to the Public Trustee's books and vouchers (but not the file) relating to that estate :
- ii. Any beneficiary aggrieved by any act, omission, or decision of the Public Trustee relating to that estate may apply in a summary way to a judge of the Supreme Court in chambers, who may make such order in the premises as he thinks just.”

19 After Section Forty-two of the Principal Act, the following sections are inserted :—

Investigation and Audit of Private Trust Accounts.

“ **42a**—(1) Subject to regulations under this Act, and unless the Supreme Court otherwise orders, the condition and accounts of any private trust estate (meaning an estate which is not being administered by the Public Trustee) shall, on an application being made to the Public Trustee and notice thereof given in the prescribed manner by or on behalf of any private trustee or beneficiary, be investigated and audited by such solicitor or public accountant as may be agreed on between the applicant trustee and his co-trustees and the Public Trustee or between the applicant beneficiary and the trustees and the Public Trustee, as the case may be, or, in default of such agreement by some solicitor or public accountant appointed by the Public Trustee :

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Amendment of Section 37 of Principal Act by adding new Section 37a.

Advances against beneficiary's share of estate.

Cf. No. 17, 1912, N. Z., s. 6.

Insertion of Section 41a, after Section 41 of Principal Act.

Solicitor or accountant acting for beneficiary in estate administered by Public Trustee may examine books and accounts.

Ibid., s. 12.

Beneficiary aggrieved may apply to Court.

Insertion of new Section 42a after Section 42 of Principal Act.

Private trust estates may be investigated and the accounts thereof audited on application by any beneficiary.

Cf. No. 19, 1913, N.Z., s. 11.

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Provided that—

- I. Except with the leave of the Supreme Court, such an investigation or audit shall not be required within Twelve months after any such previous investigation or audit; and that
- II. A beneficiary shall not be appointed under this section to make an investigation or audit; and that
- III. The Public Trustee may require the applicant to deposit the estimated costs of the investigation and audit, or to secure the same to the Public Trustee's satisfaction before proceeding with the application.

(2) The person making the investigation or audit (hereinafter called 'the auditor') shall have a right of access to the books, accounts, and vouchers of the private trustees, and to any securities and documents of title held by them on account of the estate, and may require from them such information and explanation as may be necessary for the performance of his duties.

(3) Upon the completion of the investigation and audit the auditor shall forward to the applicant, and to every private trustee, and to the Public Trustee, a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the estate, and that he has had the securities of the trust fund investments (if any) produced to and verified by him, or (as the case may be) that such accounts are deficient in such respects as may be specified in such certificate.

(4) Every beneficiary shall, subject to regulations under this Act, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate, and, at his own expense, to be furnished with copies thereof or extracts therefrom.

(5) The auditor may be removed by order of the Supreme Court; and if any auditor is removed, or resigns, or dies, or becomes bankrupt, or incapable of acting before the investigation and audit are completed, a new auditor may be appointed in his place in like manner as the original auditor.

(6) The remuneration of the auditor and the other expenses of the investigation and audit (including the Public Trustee's charges) shall be such as may be prescribed by regulations under this Act, and shall, unless the Supreme Court otherwise orders, be borne by the estate; and, in the event of the Court so ordering, such expenses shall be borne by the private trustees personally or any of them, or by the applicant, or be apportioned between them or any of them, or between them and any of them and the estate, in such proportions as the Court thinks just.

(7) If any person having the custody of any documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto, or in anywise obstructs the investigation or audit, the auditor may apply to the Supreme Court, and thereupon the Court shall make such order as it thinks just.

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(8) Subject to rules of the Supreme Court, applications under or for the purposes of this section to the Court shall be made in a summary way to a judge in chambers, and the Court may make rules regulating such applications.

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(9) If any person in any statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding Two years, and on summary conviction to imprisonment for a term not exceeding Six months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment.

(10) In this section the term 'private trust estate' includes every estate being administered by an executor, administrator, or any person other than the Public Trustee acting in a fiduciary capacity, and the terms 'private trustee' and 'private trustees' mean respectively the trustee or trustees for the time being of a private estate.

(11) The Public Trustee shall not be liable for any expenses or costs under this section.

(12) All expenses and costs for which the estate is liable under this section shall, when paid, be a charge on the assets of the estate, and such charge may be enforced in such manner as the Supreme Court on application directs."

Miscellaneous.

20—(1) Section Forty-eight of the Principal Act is hereby amended by inserting the following words at the end of Paragraph III. of Subsection (1) thereof :—

Amendment of Section 48 of Principal Act.

"The words 'medical charges' in this paragraph include reasonable hospital and maintenance expenses in any public hospital, institution, or asylum supported in whole or in part from local rates or public funds."

Hospital and maintenance expenses to be deemed medical charges.

(2) The amendment made by this section shall be deemed to have been made as from the commencement of the Principal Act; but shall not create any liability on the Public Trustee in respect of any transaction prior to the passing of this Act.

Ibid., s. 40.

21 Section Fifty-one of the Principal Act is hereby amended as from the commencement thereof by inserting at the end of the said section the words "and he shall not be further concerned to see to the application thereof."

Amendment of Section 51 of Principal Act.

22 After Section Fifty-one of the Principal Act, the following section is inserted :—

Insertion of new Section 51a after Section 51 of Principal Act.

"**51a** In addition to the power given to the Public Trustee by Section Fifty-one of this Act, the following special provisions shall apply in every case where he is administering an estate :—

Moneys payable to subject of foreign country may be paid to specified official of that country.

- I. Where any moneys or personal chattels are payable or deliverable by the Public Trustee to the subject of any country out of His Majesty's jurisdiction, the Governor may authorise the Public Trustee to pay or deliver the same to any specified official of that country on behalf

Ibid., s. 28.

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Moneys payable to any person in any part of British Dominions may be paid to specified official in that part.

Ibid., s. 28.

Insertion of Two new Sections 58a and 58b, after Section 58 of Principal Act.

Money-loss occasioned by negligence of any officer to be charged to profit and loss.

Ibid., s. 43.

Liability of Office Solicitor in conveyancing transactions to be borne by Public Trust Office.

Ibid., s. 42.

Insertion of Section 59a, after Section 59 of Principal Act.

Annual report to be submitted to Parliament.

Cf. No. 19, 1913, N.Z., s. 47.

Amendment of Section 60 of Principal Act.

Ibid., s. 46.

of the person entitled, and the receipt of such official shall be a sufficient discharge therefor to the Public Trustee, who shall not be further concerned to see to the application thereof :

- ii. As regards money or personal chattels so payable or deliverable to any person in any colony, dominion, state, island, or place of His Majesty's in foreign parts, the Public Trustee, if so authorised by the Governor, may pay or deliver the same to any specified official of such colony, dominion, state, island, or place on behalf of the person entitled; and the receipt of such official shall be a sufficient discharge to the Public Trustee, who shall not be further concerned to see to the application thereof."

23 After Section Fifty-eight of the Principal Act, the following sections are inserted, and shall be deemed to have been so inserted as from the commencement of the Principal Act :—

"**58a** Where by reason of the negligence of any member of the staff of the Public Trust Office any money loss is incurred or any extra payment has to be made, the amount involved may, with the approval of the Minister, be charged to profit and loss without further appropriation than this Act."

"**58b** Where in any conveyancing transaction between the Public Trustee and any person the Solicitor to the Public Trust Office acts for both parties, or where he acts in any matter incidental to his duties, the liability which that Solicitor would incur if he were practising on his own account shall be borne by the Public Trust Office."

24 After Section Fifty-nine of the Principal Act, the following section is inserted :—

"**59a** The Minister shall cause to be prepared in the month of October in each year (commencing with the year One thousand nine hundred and twenty) a report of the operations of the Public Trust Office during the preceding financial year, and shall lay the same before each House of Parliament within the next Twenty sitting days of such House occurring (in the same or any subsequent session or Parliament), after the receipt by him of such report."

25 Section Sixty of the Principal Act is hereby amended as from the commencement of the Principal Act, by omitting Paragraph x. thereof, and substituting therefor the following paragraphs :—

- "x. For specifying the matters or services for which charges may be made by the Public Trustee or in respect of which remuneration shall be payable to him, and fixing, by scale or otherwise, the amounts thereof, or empowering the Public Trustee so to do ;

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- XI. For fixing, by scale or otherwise, the professional fees and charges payable in respect of professional services rendered to the Public Trustee, or under his instructions by the Solicitor to the Public Trust Office, acting as barrister or solicitor, or by outside barristers or solicitors, or empowering the Public Trustee so to do: A.D. 1919.
- XII. For prescribing the forms of mortgages, leases, certificates, and other official instruments and documents to be used in the conduct of the business of the Public Trust Office:
- XIII. For any other matter which by this Act is expressed to be prescribed, or for which regulations are contemplated:
- XIV. Generally and without limitation, for any other matter, object, or purpose which he thinks necessary, advisable, or convenient for the efficient administration of this Act, or giving full effect thereto."

Unclaimed Lands and Property.

26 Section Sixty-three of the Principal Act is hereby amended by omitting all the words of Subsection One down to and including the words "the following course," and substituting the words "Where the owner of land has no known agent in this State, or is unknown, or cannot after due inquiry be found, the Public Trustee may adopt the following course."

Amendment of Section 63 of Principal Act as to unclaimed lands and property.
Ibid., s. 35.

27 Section Eighty-two of the Principal Act is hereby amended as from the commencement of that Act by inserting the following paragraph at the end thereof:—

Amendment of Section 82 of Principal Act.

- XI. To complete and carry out in such manner as he may think fit any valid subsisting contract affecting such property, or discharge any obligation attaching thereto at the time such property comes under his jurisdiction."

Retrospective operation of section.

Validation of Orders to Administer.

28 In any case in which the Public Trustee has heretofore obtained an order to administer with or without the will annexed, but has not taken out probate or letters of administration, such order is hereby declared to be, and to have been, from the time it was made, equivalent to probate or letters of administration, and all acts done or omitted under the authority of such order shall have, and shall be taken to have had, the same consequences, force, and effect as if probate or letters of administration had been obtained by the Public Trustee.

Validation of orders to administer obtained by Public Trustee under Principal Act.

