

## TASMANIA.

## THE PUBLIC TRUST OFFICE ACT, 1930.

## ANALYSIS.

## PART I.—PRELIMINARY.

1. Short title.
2. Repeal of 3 Geo. V. No. 26 and 10 Geo. V. No. 38.
3. Interpretation.

## PART II.—CONSTITUTION OF THE PUBLIC TRUST OFFICE.

4. The Public Trust Office and the Public Trustee.
5. The Deputy Public Trustee.
6. Establishment of branches and agencies.
7. Public Trustee substituted for Curator of Intestate Estates.
8. Mode of making contracts and exercising powers.
9. Declaration of secrecy.
10. Employment of solicitors, &c.
11. Fees charged.

## PART III.—THE PLACING OF ESTATES IN THE PUBLIC TRUST OFFICE.

12. General.
13. Committee.
14. Administration by Public Trustee of benefit funds.
15. Executors and administrators or trustees.
16. Trustee may pay moneys due to infants to Public Trustee.
17. Public Trustee entitled, on application, to administration of an intestate estate.
18. Public Trustee may administer testate estate if no application is made to court for probate or administration within three months after death.  
Administration may, on application, be granted to person entitled who was out of the State when grant made to Public Trustee.

19. Administration in other cases.
20. Election to administer testate or intestate estate not exceeding £400 without grant of probate or administration.
21. Public Trustee may exercise certain powers pending probate or administration to person entitled.
22. Public Trustee may act with advisory trustee.  
Powers of Public Trustee so acting.
23. Custodian trustee.
24. Functions and powers of the Public Trustee so acting.

## PART IV.—UNCLAIMED PROPERTY.

25. Powers of Public Trustee in respect to unclaimed property.
26. Expenses incurred by Public Trustee to be a charge upon property.
27. Public Trustee to advertise notice of vesting.
28. Rescission of order on application of owner, &c.
29. Order not affected by mistake of fact.

## PART V.—GENERAL DUTIES AND POWERS OF THE PUBLIC TRUSTEE.

30. General duties and powers.  
Public Trustee may decline trust.  
Vesting of estate.  
Rejection of appointment of Public Trustee to be notified to interested persons.
31. Public Trustee instead of appointing new trustee may elect to act as such.
32. Express powers of Public Trustee.
33. Shares of infants during infancy.
34. Power of Public Trustee to apply income and capital for maintenance, &c., of infant.

35. Saving of court's jurisdiction  
 36. Public Trustee may be appointed to represent parties in legal proceedings.

**PART VI.—ACCOUNTS AND INVESTMENTS.**

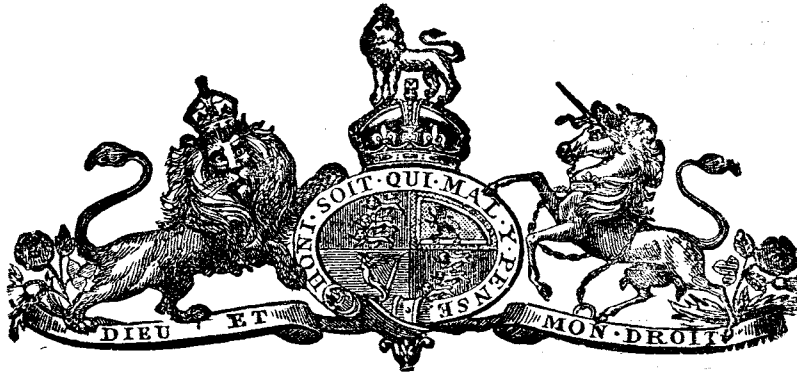
37. Investment Board.  
 38. Common Fund.  
 39. Special investments outside Common Fund.  
 40. Investment of Common Fund. Overdraft.  
 41. Deficiency in Common Fund.  
 42. Moneys to be paid into bank to the credit of the Public Trustee's Account.  
     How cheques to be signed.  
 43. Payments to Public Trustee.  
 44. Advances for administration purposes or against shares.  
     Not exceeding in the whole one-half the value of such estate or share.  
 45. General Legal Expenses Account.  
 46. Balance-sheet.  
 47. Deficiency payable out of Consolidated Revenue.  
 48. Annual Report to be submitted to Parliament.  
 49. Payment of salaries and expenses.  
 50. Minister to have access to accounts.

**PART VII.—MISCELLANEOUS.**

51. Public Trustee not required to give bond.  
 52. Shares, &c., in companies.  
 53. Disclosure of property.  
 54. Inquiries as to property.  
 55. Right of Public Trustee to costs in legal proceedings.  
 56. Allowance of claims, &c.  
 57. Public Trustee may hold inquiry as to validity of claim against estate.  
 58. Where Public Trustee may distribute assets after notice of rejection of claim of creditor.  
 59. Solicitor or accountant acting for beneficiary in estate administered by Public Trustee may examine books and accounts.  
     Beneficiary aggrieved may apply to court.

60. Provisions for closing administration of estate after notice.  
 61. Payment of claims when assets are insufficient.  
 62. Public Trustee may make payment of sums of less than £50 without order.  
 63. Payment of moneys without probate or letters of administration.  
 64. Sale of property by auction.  
 65. Public Trustee may apply to judge for directions as to distribution of estate.  
 66. Personal estate payable to subject of foreign country may be paid to specified official of that country.  
     Personal estate payable to any person in any British possession may be paid to specified official of such possession.  
 67. Reciprocity with Public Trustee in Australian States, New Zealand, or England.  
 68. Service of orders on Public Trustee. Registrar, &c., of court to see that copy of order sent to Public Trustee.  
 69. Certificate of Public Trustee.  
 70. Service of notices by Public Trustee.  
 71. Public Trustee and his officers not to be personally liable except in case of fraud or crime.  
     Money loss occasioned by negligence of any officer to be charged to profit and loss.  
     Liability of office solicitor to be borne by Public Trust Office.  
 72. Remedy against Public Trustee.  
 73. Mode of application to judge.  
 74. Public Trustee may take opinion of judge.  
 75. Power to make rules.  
 76. Validation of acts of Public Trustee acting under probate or administration granted in error.  
     Validation of certain orders obtained by Public Trustee under 3 Geo. V. No. 26.  
 77. Certain Acts to be read subject to provisions of this Act.  
 78. Regulations.

## TASMANIA.



1930.

ANNO VICESIMO PRIMO

GEORGII V. REGIS.

No. 61.

AN ACT to consolidate and amend the Law relating to the Constitution and Regulation of the Public Trust Office.

[23 December, 1930.]

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:—

## PART I.

## PRELIMINARY.

1 This Act may be cited as "The Public Trust Office Act, 1930." Short title.

2 The Public Trust Office Act, 1912, and the Public Trust Office Act, 1919, are hereby repealed.

Repeal of 3 Geo. V. No. 26 and 10 Geo. V. No. 38.

A.D.  
1930.

*Public Trust Office.*

A.D. 1930.

Interpretation.

- 3** In this Act unless a contrary intention appears—
- “Common Fund” means the Common Fund of the Public Trust Office created by this Act:
- “Court” means the Supreme Court of Tasmania:
- “Estate” means any property under administration or held, managed, or controlled by the Public Trustee in any capacity whatsoever:
- “Executor” or “Administrator” includes administrator with the will annexed for general, special, or limited purposes:
- “Person of unsound mind” means a person who is incapable of managing his affairs owing to his mental condition, and includes a lunatic and an idiot:
- “Probate” or “Letters of administration” includes letters of administration with the will annexed for general, special, or limited purposes:
- “Registrar” means the Registrar of the Supreme Court:
- “Section” means such one of the sections of this Act as is indicated by the context.

## PART II.

## CONSTITUTION OF THE PUBLIC TRUST OFFICE.

The Public Trust Office and the Public Trustee.

**4**—(1) There shall be an office called “The Public Trust Office” administered by an officer called “The Public Trustee.”

(2) The Public Trustee, the Deputy 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 the provisions of the Public Service Act, 1923.

13 Geo. V. No. 25.

(3) The Public Trustee is hereby constituted a corporation sole under that name, with perpetual succession and a seal of office.

(4) The appointment of the Public Trustee and of the Deputy Public Trustee, and their signatures, and the seal of the Public Trustee, shall be judicially noticed.

The Deputy Public Trustee.

**5**—(1) The Deputy Public Trustee shall act as, and in the place of, the Public Trustee during the illness, suspension, or absence of the Public Trustee, or while the office of the Public Trustee for any reason is vacant, and, except as provided by Subsection (7) hereof, while so acting shall have all the powers and perform all the duties of the Public Trustee.

(2) The Public Trustee, by writing under his hand, may delegate to the Deputy Public Trustee such of the powers and

*Public Trust Office.*

duties conferred or imposed on the Public Trustee by this Act, as the Public Trustee may think fit, and at any time may revoke any such delegation. A.D. 1930.

(3) No such delegation as aforesaid shall prevent the Public Trustee at any time from exercising any power or function.

(4) The exercise by the Deputy Public Trustee of any power or function under the provisions of this section shall be sufficient evidence of his authority so to do, and no person shall be concerned to inquire as to his authority so to do, or be affected by any notice in relation thereto.

(5) The Deputy Public Trustee shall be subject in all matters to the direction and control of the Public Trustee.

(6) All deeds and other 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.

(7) The power of delegation conferred by this section on the Public Trustee shall not be exercisable in any case by the Deputy Public Trustee.

**6** The Minister, on the recommendation of the Public Trustee, may—

- I. Establish a branch of the Public Trust Office at any place in this State and establish agencies of the Public Trust Office at any places in or out of this State, and may close any branch or agency: and
- II. Appoint such agents (not being members of the permanent staff) on such terms as to salary, commission, or other remuneration as he thinks fit.

Establishment  
of branches and  
agencies.

**7**—(1) The Public Trustee shall be 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.

Public Trustee  
substituted for  
Curator of Intestate  
Estates.

(2) Wherever the expression "Curator of Intestate Estates" occurs 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.

(3) The operation of this section shall relate back to the commencement of the Public Trust Office Act, 1912.

3 Geo. V No. 26.

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*Public Trust Office.*

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A.D. 1930.

Mode of making  
contracts and  
exercising powers.

**8** The execution of any contract, or the exercise of any power, respectively, by the Public Trustee may be effected—

- I. By writing under the hand of the Public Trustee and sealed with his seal of office:
- II. By writing under the hand of the Public Trustee: or
- III. Orally—

according as the transaction, if between private persons, would require to be effected in writing under seal, or in writing, or could be effected orally, respectively.

Declaration of  
secrecy.

**9** Every member of the staff of the Public Trustee shall be bound to secrecy by declaration in the prescribed form.

Employment of  
solicitors, &c.

**10**—(1) The Public Trustee, subject to such conditions as may be prescribed, may employ such solicitors, barristers, bankers, accountants, and brokers as he may consider necessary.

(2) In determining the persons, other than bankers, to be so employed in relation to any trust, the Public Trustee shall, wherever practicable, take into consideration the wishes of the creator of the trust, and of the advisory trustee, if any, and of the beneficiaries, either expressed or implied by the practice of the creator of the trust, or in the previous management of the trust.

Fees charged.

**11**—(1) There shall be charged in respect of the duties and services of the Public Trustee such fees, whether by way of percentage or otherwise, as shall be prescribed, and such fees shall be collected and accounted for by such persons, and in such manner, and shall be paid to such accounts, as shall be prescribed.

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

(3) The incidence of the fees and expenses under this section, as between capital and income, shall be determined by the Public Trustee, but any person aggrieved by such determination may apply to the Court to review the same.

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*Public Trust Office.*

A.D. 1930.

## PART III.

## THE PLACING OF ESTATES IN THE PUBLIC TRUST OFFICE.

*General.*

**12**—(1) Where any person or authority, within or without this State, now or hereafter has power to appoint a trustee, executor, administrator, guardian, committee, agent, attorney, or receiver, the Public Trustee may be so appointed. General.

(2) The power to act as trustee shall include power to act as sole trustee for any of the purposes of the Settled Land Act, 1884. 48 Vict. No. 10

(3) The power to act as agent shall include power to act as agent for the investment of money in the Common Fund, for such period and on such terms and conditions as are prescribed, or, if none, as are agreed upon between the Public Trustee and the principal.

(4) Save as is in this Act otherwise provided, the Public Trustee shall not accept any appointment jointly with any other person.

*Public Trustee as Committee.*

**13** A person of unsound mind, by his next friend or by the Public Trustee, may apply to the Court for the appointment of the Public Trustee as committee of the estate or person of such person of unsound mind. Committee.

*Benefit Funds.*

**14**—(1) In any case in which a fund is raised by public or private subscriptions for the benefit or relief of any person or class of persons— Administration  
by Public Trustee  
of benefit funds.

- I. The fund may be paid to the Public Trustee to be administered by him and to be invested in the Common Fund unless the Court otherwise directs:
- 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 subscribers:
- III. The Public Trustee, after conferring with the committee, may apply to the Court for directions as to the administration of the fund, and for that purpose may submit a scheme to the Court for approval:
- IV. The Court may approve the scheme with or without modification as it thinks fit, or may give such other directions as it thinks fit:

*Public Trust Office.*

A.D. 1930.

- v. The Public Trustee shall administer the fund in accordance with the scheme so approved or the directions so given:
- vi. On the application of the Public Trustee or of the Attorney-General on the relation of any member of the committee, or of any person claiming an interest in the fund, the Court at any time may 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 raised before or after the commencement of this Act.

*Public Trustee as Executor, Administrator, or Trustee.*

Executors and administrators or trustees.

**15**—(1) With the consent of the Court, any—

- I. Executor, whenever appointed and whether he has taken out probate or not: or
- II. Administrator, whether the letters of administration are with the will annexed or otherwise and whenever the same were granted—

may appoint the Public Trustee to act as executor or administrator respectively in his place, except where he is expressly prohibited from so doing by the terms of the instrument under which he is acting.

3 Geo. V. No. 26. (2) Whenever, under the last preceding subsection, or under Section Nine of the Public Trust Office Act, 1912, any executor or administrator with the will annexed appoints, or has appointed, 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 sole surviving trustee, or if there were no trustee appointed by the trust instrument or in existence.

(3) Trustees, whenever appointed, and under whatsoever trust instrument appointed, may appoint the Public Trustee sole trustee, unless expressly prohibited, notwithstanding the terms of the trust as to the number of trustees.

Executors, whose duties continue in the nature of a trusteeship after their administration is closed, shall be deemed, for the purposes of this subsection, to be trustees.

(4) Where there are more trustees, executors, or administrators than one, any one trustee, executor, or administrator, as the case may be, may apply to the Court to have the Public Trustee appointed sole trustee, executor, or administrator, and such application may be made either before or after the will, if any, has been proved.



*Public Trust Office.*

(5) Where the consent of any person is required for the appointment of a trustee, executor, or administrator, and such person refuses to consent to the appointment of the Public Trustee, or is an infant or a person of unsound mind, or is permanently absent from this State, or is under any other disability, the Court may appoint the Public Trustee without such consent.

A.D. 1930.

**16—**(1) Any trustee may pay any moneys due to any infant to the Public Trustee, 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 trustee in regard to such moneys.

Trustee may pay moneys due to infants to Public Trustee.

(2) Such trustee shall furnish the Public Trustee with a copy of the trust instrument, and the Public Trustee shall act in accordance therewith.

(3) The writing referred to in Subsection (1) of this section shall contain a certificate by the trustee that the amount so paid as aforesaid is the whole amount to which the infant is entitled under the trust instrument, and the Public Trustee shall not be concerned to inquire as to the truth of the statements contained in such writing.

**17—**(1) Where any person domiciled in this State, or who has property in this State, has died or dies intestate, the Public Trustee, if he thinks fit to apply therefor, shall be entitled as of right to administration of the estate of such person, unless—

Public Trustee entitled, on application, to administration of an intestate estate.

- I. Administration thereof has been granted to some other person and the same is being administered by him: or
- II. Any person domiciled in this State who, but for this section, would be entitled to such administration, makes application therefor to the Court before the same is granted to the Public Trustee.

(2) The Public Trustee, before making an application under this section, shall give public notice in the prescribed form of his intention so to do, and such notice shall be published fourteen days before the application is made.

(3) Such notice as aforesaid shall be in lieu of, and shall take the place of, a citation, and it shall not be necessary for the Public Trustee to take out or publish a citation.

**18—**(1) Where any person domiciled in this State, or who has property in this State, has died or dies testate, and application for probate or letters of administration has not been made within three months after the death of such person, the Public Trustee may apply to the Court for letters of administration of the estate of such person, and the Court shall make such grant unless the person entitled to probate or letters of

Public Trustee may administer testate estate if no application is made to court for probate or administration within three months after death.

*Public Trust Office.*

A.D. 1930.

administration applies therefor, or shows to the satisfaction of the Court that the delay in making such application has been, and if the same continues that it still is, unavoidable or accidental.

(2) On such application no costs shall be awarded against the Public Trustee.

Administration may, on application, be granted to person entitled who was out of the State when grant made to Public Trustee.

(3) On the application of any person entitled to probate or letters of administration with the will annexed 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 Court may grant probate or letters of administration to such person in such manner and subject to such limitations or conditions as the Court thinks proper.

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

(5) Upon the grant of probate or letters of administration to such person, all the powers, rights, duties, and liabilities of the Public Trustee, in any way relating to the estate thereby affected, shall cease, except as herein mentioned, and so much of such estate as has not then been administered by the Public Trustee shall vest in such person, subject to the payment to the Public Trustee of all moneys properly chargeable by him for commission, costs, charges, and expenses in relation to such estate, including all costs of and incidental to his application for probate or letters of administration.

Administration in other cases.

**19—**(1) Where any person domiciled in this State or who has property in this State has died, or shall hereafter die, the Court, on the application of the Public Trustee, may grant to him letters of administration of the estate of such person in any of the following cases—

- I. Where such person leaves no executor willing and able to act in the execution of his will, and resident within the State:
- II. Where every executor or administrator has died:
- III. Where the estate or any portion thereof is liable to waste, and every 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 the executor, administrator, or next-of-kin has requested the Public Trustee in writing to apply for such letters of administration: or

*Public Trust Office.*

- IV. Where part of an estate already partly administered is unadministered owing to the absence from this State, or the incapacity, of the executor or administrator, or where the executor or administrator has become bankrupt. A.D. 1930.

(2) Upon an application by the Public Trustee under Paragraph IV. of Subsection (1) hereof, an absent or bankrupt executor or administrator may be discharged by the Court.

*Elections to Administer.*

**20**—(1) Where any person domiciled in this State or who has property in this State has died, or dies, 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 or letters of administration, as the case may be, the Public Trustee may, in all cases in which he is entitled to apply for administration, in lieu thereof file in the office of the Registrar an election in writing to administer such estate, and setting forth—

Election to administer testate or intestate estate not exceeding £100 without grant of probate or administration.

- I. The name, residence, and occupation, so far as then known to the Public Trustee, of such person at the date of his death:
- II. The property forming the estate of such person so far as the same is then known to the Public Trustee:
- III. The date of death of such person: and
- IV. If such person is believed by him to have died testate, that, after due inquiries, he believes that the document annexed to such election is the testator's last will, or an exemplification thereof, if probate of such will or other appropriate grant in respect thereof has been made out of the State, and that such will has been validly executed according to law.

(2) On such election being filed the Public Trustee shall be deemed to be administrator or executor, as the case may be, of the property of the deceased person in all respects as if letters of administration or probate had been granted to him by the Court.

(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 he is entitled to administer such estate.

(4) If the Public Trustee—

- I. After filing such election, finds that the gross value of the property to be administered exceeds the sum of Six hundred Pounds, he shall, as soon as practicable thereafter: or

*Public Trust Office.*

A.D. 1930.

II. At any time considers it desirable for any reason so to do he may—  
file in the office of the Registrar a memorandum under his hand stating the fact, and revoking such election, and apply for letters of administration or probate as the case may require.

(5) If after filing such election the Public Trustee finds—

- I. That the deceased person who was supposed to have died intestate has died testate: or
- II. That the document annexed to such election as the testator's last will has been superseded by a later will, or for any reason is of no testamentary validity or effect—

he shall, as soon as practicable thereafter, file in the office of the Registrar a memorandum stating the fact and revoking such election; and thereupon such election shall be revoked accordingly, and the Public Trustee shall be at liberty to file a fresh election under this section, and the provisions of this section shall apply to such fresh election as if no previous election had been filed thereunder.

(6) A copy of any election filed under this section certified as a correct copy under the seal of the Court shall be equivalent to an exemplification for all purposes.

Public Trustee may exercise certain powers pending probate or administration to person entitled.

**21—(1)** Where any person has died, or dies, leaving property in this State, and notwithstanding that some person other than the Public Trustee is appointed executor, or is entitled to letters of administration, the Public Trustee, if he thinks fit, pending the grant of probate or letters of administration, may file in the office of the Registrar an election in writing setting forth that he intends to exercise with respect to the estate of such person all such powers and authorities and do all such acts and things as he might have, exercise, or do, if such person had died intestate, and the Public Trustee had obtained letters of administration of his estate, and thereupon the Public Trustee may exercise such powers and authorities and do such acts and things accordingly.

(2) The Public Trustee shall not, in any such case as aforesaid, sell, lease, exchange, mortgage, or partition any portion of the property, other than personal estate of a perishable nature, except by order of the Court made on his application.

(3) Before filing an election under this section the Public Trustee shall give notice in writing or by telegram to any person in this State, known to the Public Trustee as a person who would be entitled to obtain probate or letters of administration, and not being an infant or a person of unsound mind, informing such person that he intends so to act unless such person proceeds to apply for probate or letters of administration forthwith.

*Public Trust Office.*

(4) If such person, within twenty-one days after the posting of such notice or the despatching of such telegram to him, does not give notice, in writing or by telegram, to the Public Trustee that he intends to apply for probate or letters of administration, or gives such notice, but fails for fourteen days thereafter to apply for the same, or if he makes such application and it fails, then, unless the Court otherwise orders, the Public Trustee may proceed to exercise any of the powers and authorities given by this section. A.D. 1930.

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

(6) Where it is not known to the Public Trustee that there is in this State any person entitled to obtain probate or letters of administration, or in any case of emergency, of which the Public Trustee shall be the sole judge, the Public Trustee may exercise the powers and authorities conferred on him by this section without giving such notice as aforesaid.

(7) All expenses incurred by the Public Trustee under this section shall be a first charge upon the property in relation to which the same are incurred.

*Advisory Trustee.*

**22**—(1) In the administration of any trust the Public Trustee may act with an advisory trustee to the extent hereinafter provided. Public Trustee  
may act with  
advisory trustee.

(2) An advisory trustee may be appointed—

- I. By the trust instrument:
- II. By order of the Court made on the application of the Public Trustee, or 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—

and a trustee who appoints the Public Trustee trustee in his place, under the provisions of this Act, may give to the Public Trustee, at the time of such appointment, notice in writing that he proposes to act as advisory trustee, and thereupon such trustee shall be deemed to have been appointed advisory trustee accordingly.

(3) Where the Public Trustee acts with an advisory trustee the trust property shall be vested in the Public Trustee, and he shall have the sole management and administration thereof and of its trusts as fully and effectually as if he were the sole trustee. Powers of Public  
Trustee so acting

*Public Trust Office.*

A.D. 1930.

(4) In any such case as aforesaid the Public Trustee may consult the advisory trustee on any matter relating to the trust and the advisory trustee may advise the Public Trustee on any such matter.

(5) In case of difference between the Public Trustee and the advisory trustee, either the Public Trustee or the advisory trustee may submit the matter in dispute to the Court, whose decision thereon shall be final, and shall bind both the Public Trustee and the advisory trustee.

(6) No person dealing with the Public Trustee shall be concerned to inquire as to the concurrence or otherwise of the advisory trustee in any matter, or be affected by notice of the fact that the advisory trustee has not concurred therein.

(7) The power of appointing a new advisory trustee when exercisable by the trustee shall be exercised by the advisory trustee alone, but the Public Trustee shall have power to apply to the Court for the appointment of a new advisory trustee.

(8) Subject to the provisions of the trust instrument, an advisory trustee shall receive out of the estate such remuneration as may be prescribed.

*Custodian Trustee.*

Custodian trustee. **23** The Public Trustee may be appointed as custodian trustee of any trust—

- I. By the trust instrument:
- II. By order of the Court made on the application of a beneficiary, or of any person on whose application the Court would have power to appoint a new trustee: or
- III. By any person having power to appoint a new trustee.

Functions and powers of the Public Trustee so acting.

**24** Where the Public Trustee is appointed as custodian trustee—

- I. The trust property shall be vested in the Public Trustee 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 trustees of the trust, shall remain vested in the trustees other than the custodian trustee, who are hereinafter referred to as "the managing trustees":
- III. As between the custodian trustee and the managing trustees, and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title

62 Vict. No. 34.

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*Public Trust Office.*

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relating to the trust, but the managing trustees shall have free access thereto, and be entitled to take copies thereof or extracts therefrom: A.D. 1930.

- IV. The sole function of the custodian 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, and for that purpose he shall execute all such documents and perform all such acts as the managing trustees in writing direct:
- V. The direction referred to in Paragraph IV. hereof shall mean the direction of both trustees where there are two managing trustees, or of the majority of the managing trustees where there are more than two:
- VI. The custodian trustee shall not incur any liability by acting on any such direction, but, if he is of opinion that any such direction conflicts with the trusts or is contrary to law, or is otherwise objectionable, he may submit the matter to the Court, whose decision thereon shall be final, and shall bind both the custodian trustee and the managing trustees:
- VII. The custodian trustee shall not be liable for any act or default of any of the managing trustees:
- VIII. All actions and proceedings touching or concerning the trust shall be brought or defended in the joint names of the custodian trustee and the managing trustees, but the custodian trustee shall be liable for the costs thereof only so far as the trust property in his hands shall extend:
- IX. No person dealing with the custodian trustee shall be concerned to inquire as to the concurrence or otherwise of the managing trustees in any matter, or be affected by notice of the fact that the managing trustees have not concurred therein:
- X. The power of appointing a new managing trustee when exercisable by the trustees shall be exercisable by the managing trustees alone, but the custodian trustee shall have power to apply to the Court for the appointment of a new managing trustee:
- XI. 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 wish of the majority of the beneficiaries or that it is expedient on other grounds 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 may seem to the Court to be necessary or expedient:

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*Public Trust Office.*


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A.D. 1930.

- XII. In computing the number of managing trustees who may lawfully act or be appointed, neither an advisory trustee nor custodian trustee shall be included:
- XIII. The Public Trustee, acting as custodian trustee, shall receive such remuneration as may be prescribed.
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## PART IV.

## UNCLAIMED PROPERTY.

Powers of Public Trustee in respect to unclaimed property.

**25**—(1) The Court at any time may make an order vesting any property in the Public Trustee, if in respect thereof the Court is satisfied that—

- I. There are reasonable grounds to believe that the owner is permanently or indefinitely absent from the State, and has no agent in the State with authority to act on his behalf:
- II. After sufficient inquiry the owner cannot be found, or it cannot be ascertained who is the owner:
- III. It is not known whether the owner is living or dead, and there is no person in the State known to have authority to administer the property: or
- IV. The owner is dead and the whereabouts of his executors or administrators cannot be ascertained.

(2) Such order as aforesaid may be made on the application, *ex parte*, of the Public Trustee, who shall hold such property, subject to this Act, upon trust for the owner thereof.

(3) Upon the application of the Public Trustee, or of any person interested, the Court may make an order directing the Public Trustee to apply such property or any portion thereof in such manner for the benefit of the wife, husband, or children of such owner as the judge shall think fit.

Expenses incurred by Public Trustee to be a charge upon property.

**26** All expenses properly incurred by the Public Trustee in connection with such property as aforesaid shall be a charge upon such property, and shall bear interest at the prescribed rate, and such charge shall come next in priority to any mortgage or charge to which such property is subject when it becomes vested in the Public Trustee.

Public Trustee to advertise notice of vesting.

**27** On any such property becoming vested in him 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 such vesting.



*Public Trust Office.*

**28** The owner of any such property, or any person having any interest in such property or in any part thereof, at any time after the making of the order hereinbefore mentioned, on notice to the Public Trustee, may make application to the Court to rescind the said vesting order, and the same may thereupon be rescinded accordingly on such terms as the Court thinks fit; but no such rescission shall affect any charge acquired by the Public Trustee under 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. 1930.

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Rescission of order on application of owner, &c.

**29** No such order as aforesaid, and nothing done in pursuance of any such order, shall be or become invalid or inoperative for the reason only that it has been made or done under a mistake of fact, or because the owner of such property is dead at the time when the order is made or has died since the making thereof, or because of any disposition of such property made by the owner thereof during the subsistence of the order.

Order not affected by mistake of fact.

## PART V.

## GENERAL DUTIES AND POWERS OF THE PUBLIC TRUSTEE.

**30**—(1) Subject to this Act, the duties and rights of the Public Trustee, when acting in any capacity under this Act, shall be the same as those of a private person acting in the like capacity.

General duties and powers.

(2) The Public Trustee may decline, either absolutely or except upon conditions, to accept any appointment under this Act, but shall not so decline on the ground only of the small value of the property concerned.

Public Trustee may decline trust.

(3) Upon any appointment of the Public Trustee under this Act, all estates, rights, powers, and functions in and with respect to the subject-matter of such appointment, shall, by virtue of such appointment, and without other assurances in the law, become thereby vested in the Public Trustee.

Vesting of estate.

(4) If the Public Trustee declines to accept any appointment under this Act, notice thereof shall be sent to such persons as the Public Trustee thinks fit.

Rejection of appointment of Public Trustee to be notified to interested persons.

(5) If any property has become, by virtue of an appointment which the Public Trustee declines to accept, vested in the Public Trustee, then, by virtue of such refusal, such property shall cease to be vested in the Public Trustee, and shall become vested in such persons as would have been entitled

*Public Trust Office.*

A.D. 1930.

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 refusal.

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

Public Trustee  
instead of  
appointing new  
trustee may elect  
to act as such.

**31**—(1) Where under any instrument or Statute the Public Trustee is empowered to appoint a new trustee or new trustees, he may, in lieu of making such appointment, by writing under his hand and seal of office, elect to act as such new trustee.

(2) Any such election as aforesaid shall have the same effect and operate in the same manner as if the Public Trustee had been appointed the sole trustee by some other person acting under the authority of the empowering instrument or Statute.

Express powers  
of Public Trustee.

**32**—(1) Subject to this Act and to the provisions of any trust instrument, the Public Trustee, for any of the purposes of this Act, unless expressly prohibited by or under the trust instrument, at his discretion, and in addition to, and not in restriction of, any other powers under this Act, or any other Act or otherwise, may exercise the following powers:—

- I. Sell, or concur with any other person in selling, property by public auction or private contract, altogether or in parts, and subject to such conditions as he thinks fit:
- II. Purchase in fee simple lands in this State:
- III. Postpone the sale, calling-in, and conversion of any real or personal estate for so long as he thinks fit, notwithstanding that it may be of a wasting, speculative, or reversionary nature:
- IV. 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 relating to subdivisions:
- V. Exchange property or join in a partition of property:
- VI. Grant easements and enter into party-wall agreements:
- VII. In exercising any power of sale conferred by this or any other Act, or by any instrument—
  - (a) Grant a lease of the property with an optional or compulsory purchase clause:
  - (b) Sell any buildings, fixtures, timber, or other things affixed to land apart from the land itself:

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*Public Trust Office.*

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(c) Agree to the cancellation or variation of any contract or agreement for the sale and purchase of any property upon such conditions as he thinks proper: A.D. 1930.

- VIII. Lease, or concur in leasing, property for a term not exceeding twenty-one years, to take effect in possession at a reasonable yearly rental with or without a fine, premium, or foregift, provided that, should any such fine, premium, or foregift be taken, the amount thereof shall be deemed to be part of the rental, and shall, as between the persons beneficially entitled to the rental, be considered as accruing from day to day, and be apportioned over the term of the lease:
- IX. Surrender, or concur in surrendering, any lease, and accept a new lease:
- X. Accept a lease of any property at such rent, and upon such terms and conditions, as he shall think fit:
- XI. Insure against fire, accident, or loss any property, without obtaining the consent of any person who may be entitled to the use, occupation, or enjoyment of such property, and recover the costs of so doing from the person entitled to such use, occupation, and enjoyment:
- XII. Expend money for the repairs, maintenance, upkeep, or renovation of any property, without obtaining the consent of any person having any estate or interest therein, and apportion the cost thereof between *corpus* and income or otherwise among the persons beneficially entitled thereto in such manner as to him seems equitable:
- XIII. Where in any estate under his administration he holds any life policy, and there are not sufficient funds to keep the same on foot, he may surrender such policy, and may in any such case accept in lieu thereof a fully paid-up policy:
- XIV. Pay rates, taxes, assessments, insurance premiums, and other outgoings:
- XV. Borrow money upon the security of property, and secure the payment thereof and interest by mortgage or charge of such property, with or without a power of sale, and enter into such covenants, provisions, and agreements as may be agreed upon by him and the mortgagee. The power to give such security shall extend to any debt or liability incurred before the date of the Public Trustee's appointment, and he may pay the interest secured

*Public Trust Office.*

A.D. 1930.

by such mortgage or charge out of the income, or, if such income be insufficient, out of the capital:

- XVI. Exercise powers of appointment and give consents as fully as the person whom he represents could have exercised or given the same:
- XVII. Grant powers of attorney to any person in or out of this State to do any act or thing which he, if personally present, could do:
- XVIII. 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, and 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, within one month after receipt of such notice, may apply to a judge to vary the same, and such appropriation shall be conclusive save as otherwise directed by the judge:  
 Provided further that, where the person interested is out of the jurisdiction, the said period of one month may be extended by a judge for such period as he may think fit on the application of the Public Trustee or of any person interested:
- XIX. Bring or defend any action or other proceeding and suffer judgment to go by default or consent to any judgment or order in such action or proceeding upon such terms as he thinks fit:
- XX. Take part in any liquidation proceedings, or take proceedings to cause a person to be adjudicated a bankrupt, or a company to be wound up, and vote and act either personally or by proxy at any meetings of creditors of any person or company, or of shareholders of any company, whether the company is being wound up or not:
- XXI. Institute criminal proceedings concerning property:
- XXII. Pay debts, obligations, costs, and expenses, including funeral charges, within the meaning of this Act:
- XXIII. Carry out contracts entered into before or after the date of his appointment:
- XXIV. Consult with and employ such persons as he deems expedient for advising or assisting him in the administration or management of any estate, and remunerate any such person in such manner as he thinks fit:

*Public Trust Office.*

XXV. From time to time expend portion of the capital of any estate under his administration on the improvement or development thereof, and for the like purpose advance money on the security of such estate, but where the amount to be so expended or advanced exceeds Five hundred Pounds the same shall not be expended or advanced except upon an order of the Court: A.D. 1930.

XXVI. Inspect all returns lodged with the Commissioner of Taxes under any Act relating to Land Tax or Income Tax by a person whose estate is under administration by the Public Trustee and take copies thereof:

XXVII. Retire from the trusteeship of an estate, the interests of which are in conflict, involving litigation, with those of another estate of which he is trustee:

XXVIII. Do or omit all acts and things and execute all instruments necessary to carry into effect any of his powers and authorities.

(2) In any case where the property to be affected exceeds Two thousand Pounds in value, the Public Trustee, unless expressly authorised by the trust instrument so to do, shall not exercise any of the powers conferred on him by Paragraphs I., II., IV., V., VI., VII., VIII., IX., X., XII., XV., XVI., or XVIII. of Subsection (1) hereof without an order of the Court for that purpose, except that—

I. Where he is acting as administrator of an intestate estate he may exercise the powers conferred by the said Paragraph I.: and

II. He may lease or concur in leasing property on a weekly or monthly tenancy, or at will, or for any term not exceeding one year and at such rent and on such terms and conditions as he may think fit—

without any such order.

(3) On the application of the Public Trustee the Court may make such order as aforesaid and the same may apply generally to the property to be affected as aforesaid or to such part thereof as the Court may think proper.

(4) For the purposes of Subsection (2) hereof the value of such 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. 1 Geo. V. No. 47.

(5) In any criminal proceedings instituted by the Public Trustee as hereinbefore provided, the property to which the same relate shall be deemed, until the contrary is proved, to be the property of the Public Trustee and in his possession.

*Public Trust Office.*

A.D. 1930.

*Powers Relating to Infants.*

Shares of infants during infancy.

**33** Subject in each case to the terms of the trust instrument, where the Public Trustee is the trustee of an estate, he shall hold the shares of any infant beneficiaries therein as trustee for such infants until such infancy ceases, and such shares shall be dealt with and administered in the meantime under this Act.

Power of Public Trustee to apply income and capital for maintenance, &amp;c., of infant.

**34**—(1) Where any property is held by the Public Trustee in trust for an infant, the Public Trustee in his discretion may apply—

- I. The whole or any part of the income of the share to which such infant is entitled in possession: and
- II. Any part or parts of the capital of the share to which the infant is entitled in possession or remainder immediately expectant on a prior life-interest, not exceeding in the whole one-half of such capital or the sum of Two hundred and fifty Pounds whichever is the greater, but no such application of a share in remainder shall be made without the previous consent in writing of the person on whose death such prior interest is determinable—

for the maintenance, education, and advancement or otherwise for the benefit of such infant, during minority.

(2) The provisions of Subsection (1) hereof shall not apply to a case where provision is expressly made by the trust instrument—

- I. For the maintenance, education, advancement, or otherwise for the benefit of an infant: or
- II. Prohibiting such application.

(3) Where any property is held by the Public Trustee in trust for an infant, either for life or for any greater interest, contingently upon the infant attaining a specified age, or on the occurrence of any event before attaining that age, the Public Trustee, in his discretion, may apply for or towards the infant's maintenance, education, advancement, or benefit, the income of such property, or any part thereof, whether or not there is any fund available for such purpose, or any person bound by law to provide for the infant's maintenance or education.

(4) The Public Trustee shall accumulate all the residue of the income mentioned in Subsection (3) hereof, together with compound interest thereon, by investing the same and the resulting income thereof, and shall hold such accumulations for the benefit of the persons who ultimately become entitled to the property from which the same arise; but the Public Trustee, at any time, in his discretion, may apply such accumulations or any part thereof as if the same were income arising in the then current year.

*Public Trust Office.*

(5) Where trust property is made payable to a class of persons who, on respectively reaching a specified age, or on the happening of a specified event, would become entitled in possession to a share of such property and who respectively might become entitled, by survivorship or otherwise, to the shares of the other members of the class, then the Public Trustee, with the consent of the persons having prior estates or interests in the property and of any members of the class who have become entitled as aforesaid, may apply the presumptive or contingent share of any infant belonging to such class for the maintenance education, or benefit of such infant. A.D. 1930.

(6) The power conferred by Subsection (5) hereof may be exercised, although future members of the class may come into existence subsequently, and whether the property consists of capital or income, and whether or not the income is directed to be accumulated.

(7) The Public Trustee may decline to exercise such power as last aforesaid without an order of the Court for that purpose, which order the Court, on his application, is hereby empowered to make.

(8) Instead of himself applying income or capital under this section, the Public Trustee may 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.

**35** Nothing in this Act shall restrict any court having jurisdiction from making any order for the application of either capital or income for the maintenance, education, advancement, or otherwise for the benefit of an infant. Saving of Court's jurisdiction.

*Representation of Parties.*

**36** The Public Trustee may be appointed or directed by the Court to represent any party to any proceedings in the Court, or any person interested therein. Public Trustee may be appointed to represent parties in legal proceedings.

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*Public Trust Office.*


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A.D. 1930.

## PART VI.

## ACCOUNTS AND INVESTMENTS.

*The Common Fund.*Investment  
Board.

**37**—(1) There shall be a Board called the “Public Trust Office Investment Board,” and hereinafter referred to as “the Board,” which shall consist of the Public Trustee, the Manager of the Agricultural Bank, and one member to be appointed by the Governor for such term not exceeding three years as the Governor may approve.

(2) The Board shall control the investment of the moneys from time to time in the Common Fund, or otherwise in the hands of the Public Trustee and available for investment, but shall have no other functions.

(3) In the case of the absence, through illness, suspension, or otherwise, of any of the officers mentioned in Subsection (1) hereof, or in case of a vacancy in any of their offices, the Minister may appoint any person to act as a member of the Board in the place of such officer during such absence, or, in the case of a vacancy, until such vacancy is filled, and the person so appointed may be a person other than the officer temporarily performing the ordinary duties of the absent officer or vacant office as the case may be.

Common Fund.

**38**—(1) Subject to this Act all capital moneys, however arising, vested in the Public Trustee, shall become one Common Fund, and shall be invested by him as provided by Section Forty-one.

(2) Investments made from the Common Fund shall not be made in the name, or on account of, any particular estate.

(3) Subject to this Act, interest earned by such investments shall be paid into the Common Fund.

(4) The interest payable to the respective estates, the moneys of which form the Common Fund, shall be at such rate as may be prescribed.

(5) Such interest shall be credited to the respective estates quarterly on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December in each year.

Special invest-  
ments outside  
Common Fund.

**39**—(1) The following moneys shall not form part of the Common Fund—

- I. Moneys directed to be invested in some other specified manner, whether or not investment in the Common Fund be expressly excluded:



*Public Trust Office.*

- II. Moneys which the Court, upon the application of the Public Trustee or of any beneficiary, shall direct shall not form part of the Common fund. A.D. 1930.

(2) Moneys which do not form part of the Common Fund shall be invested by the Public Trustee in the manner specified as aforesaid, or in such manner as the Court may direct on such application as aforesaid, but 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.

**40**—(1) The Public Trustee may invest all moneys comprised in the Common Fund— Investment of  
Common Fund.

- I. In the Government securities of the United Kingdom or of the Commonwealth or any State thereof, or of any British possession, issued under the authority of the Parliament or other legislative authority of such Kingdom, Commonwealth, State, or British possession respectively, and secured upon the public revenue thereof:
- II. In debentures issued by the Municipal Corporation of Hobart or Launceston respectively under any law now or hereafter in force, secured upon general or special rates: or
- III. In advances by way of mortgage on the security of any real estate held in fee simple in this State, and free from encumbrances, to an amount not exceeding three-fifths of the value of such real estate:
- IV. On fixed deposit at interest in any incorporated bank—
  - (a) Carrying on business in Tasmania at the commencement of the Trustee Act, 7 Ed. VII. No. 5, 1907; or
  - (b) Thereafter proclaimed by the Governor as a bank in which deposits may be made by trustees:
- V. On deposit with the Treasurer or in any State or other Savings Bank carrying on business in this State under the provisions of the Savings Bank Act, 1848: 12 Vict. No. 1.

VI. In advances under Section Forty-four.

(2) The Public Trustee, with the approval of the Minister, may obtain advances from the bank at which the Public Trustee's Account is kept, and the Treasurer may guarantee the repayment to the bank of any such advance. Overdraft.

(3) Every such advance shall be for such period, and at such rate of interest, as the Minister shall approve.

*Public Trust Office.*

A.D. 1930.

Deficiency in  
Common Fund.

**41** If the Common Fund is insufficient to meet all the lawful claims thereon, the Treasurer, without further appropriation than this Act, shall pay such sum out of the Consolidated Revenue as may be necessary to meet the deficiency, to the extent to which the Assurance and Reserve Fund, hereinafter mentioned, is insufficient for that purpose.

*Accounts.*Moneys to be  
paid into bank to  
the credit of the  
Public Trustee's  
Account.How cheques to  
be signed.

**42** 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.

Payments to  
Public Trustee.

**43** 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 as soon as practicable after their receipt.

*Advances.*Advances for  
administration  
purposes, or  
against shares.Not exceeding in  
the whole one-  
half the value of  
such estate or  
share.

**44**—(1) The Public Trustee may make advances out of the Public Trustee's Account for the payment of expenses necessarily incurred by him in the administration of an estate.

(2) In any case where there is to the credit of an estate any property, whether capital or income, but there is no money or not sufficient money available to make payments required to be made on account of such estate, whether to the persons entitled to such estate or to a share or interest therein or otherwise, the Public Trustee may advance and pay, out of the Public Trustee's Account, for or on account of such estate any sum of money, not exceeding in the whole one-half of the total value of such property, which he is authorised or required to pay.

(3) Where an estate is in the Public Trust Office, and any person entitled to a share therein desires an advance against such share, the Public Trustee may make advances to that person not exceeding in the whole one-half of the value of such share as estimated by the Public Trustee.

(4) All sums so advanced, with all interest thereon, shall be a first charge upon all the property of the estate or the share against which the advance is made, as the case may be, and shall bear interest at such rate as may be fixed by the Public Trustee.

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*Public Trust Office.*

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This provision shall relate back to the commencement of the Public Trust Office Act, 1912. A.D. 1930.

(5) All interest received under this section shall be paid into the Common Fund. 3 Geo. V. No. 26.

(6) A certificate under the hand and seal of the Public Trustee, stating the amount owing for advances and interest on any specified date by the estate or 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.

*General Legal Expenses Account.*

**45** There shall be paid out of the fees and income earned by the Public Trustee in each year such sum as the Public Trustee, with the approval of the Minister, determines, into a fund to be called "The General Legal Expenses Account," out of which there may be paid from time to time such costs as may be incurred by the Public Trustee in obtaining legal opinions on any matter in which the Public Trustee, or any estate administered by him is concerned, and which, in the opinion of the Public Trustee, cannot reasonably be charged against any particular estate. General Legal Expenses Account.

*Balance-Sheet.*

**46** —(1) The Public Trustee, within thirty days after the close of each financial year shall prepare a balance-sheet and a Profit and Loss Account showing the financial position of the Public Trust Office at the close of such year. Balance-sheet.

(2) The Public Trustee shall send such Balance-Sheet and Profit and Loss Account to the Auditor-General, who shall forthwith transmit the same, together with such report thereon as he thinks fit, to the Minister, by whom it shall be laid before Parliament within the first ten sitting days thereof after the same is received by him.

**47** —(1) If the balance to the credit of the Profit and Loss Account at the close of any financial year is insufficient to meet the charges thereon, the Treasurer, without further appropriation than this Act, may advance such sums out of the Consolidated Revenue as may be necessary to meet such charges to the extent to which the Assurance and Reserve Fund hereinafter mentioned is insufficient for that purpose. Deficiency payable out of Consolidated Revenue.

(2) All moneys so advanced shall be repaid by the Public Trustee to the Consolidated Revenue, as soon as there is in the Profit and Loss Account a balance available for such repayment.

*Public Trust Office.*

A.D. 1930.

(3) If the balance to the credit of the Profit and Loss Account at the close of any financial year 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 pay the remaining three-fourths of such balance into the Consolidated Revenue at such times as the Treasurer directs.

(4) The Public Trustee, with the approval of the Minister, may expend moneys out of the Assurance and Reserve Fund in the acquisition and furnishing of office premises.

*Annual Report.*

Annual Report to  
be submitted to  
Parliament.

**48** The Minister shall cause to be prepared, in the month of October in each year, commencing with the year one thousand nine hundred and thirty, 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 after the receipt by him of such report.

*Salaries, &c.*

Payment of  
salaries and  
expenses.

**49** The Public Trustee shall pay such salaries and other expenses in the general service of the Public Trust Office 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.

*Access to Accounts.*

Minister to have  
access to accounts.

**50** The Minister, and any officer authorised by him, shall have access at all times to all the books, accounts, documents, and papers in the Public Trust Office, and the Public Trustee shall furnish at all times to the Minister all such information as the Minister may require.

*Public Trust Office.*

A.D. 1930.

## PART VII.

## MISCELLANEOUS.

*Bond.*

51 No bond or other security shall be required from the Public Trustee in relation to his appointment to or acting in any office or capacity pursuant to this Act or any other Act. Public Trustee not required to give bond.

*Shares.*

52—(1) The entry of the Public Trustee by that name in the register of shareholders of a company shall not constitute notice of a trust. Shares, &c., in companies.

(2) No company shall refuse to enter the name of the Public Trustee in its register of shareholders by reason only that the Public Trustee is a trustee or is a corporation.

(3) Where any estate which is being administered by the Public Trustee consists wholly or partly of shares in any body, whether corporate or not, or in any association, or where such shares are vested in the Public Trustee under the terms of any trust instrument, or are purchased by him in the exercise of any trust, direction, or authority imposed or conferred upon him, notwithstanding any law affecting the registration of persons holding shares as trustees or in any other representative capacity, the Public Trustee shall be entitled to be registered as the proprietor of such shares as trustee or in any other representative capacity as he may require.

(4) The liability of the Public Trustee in respect of any such shares as aforesaid shall not in any case exceed the value of the other assets, which, when any demand is made for the satisfaction of any such liability, he holds in trust for the person beneficially entitled to such shares.

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

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

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*Public Trust Office.*


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A.D. 1930.

(7) In this section the term "shares" includes debentures and debenture stock.

(8) Notwithstanding the provisions of any Act, charter, deed of settlement, or other instrument, the number of shares in the capital of any bank that may be held by the Public Trustee in his corporate capacity shall not be subject to any limit.

*Disclosure and Recovery of Property.*

Disclosure of  
property.

**53** Where—

- I. Any corporation, association, or person is in possession of any property:
- II. There is to the credit of any person living or dead, in the books or accounts or otherwise of any corporation, association, or partnership, any property:
- III. Under any partnership or association any person is entitled to share in the assets thereof or his representatives are entitled to any payments as his share in such assets:
- IV. Any person, whether living or dead, is the registered proprietor of any shares in any corporation or association: or
- V. Any person is indebted to any person whether living or dead—

and such property, shares, or debts are vested in or belong to the Public Trustee, it shall be obligatory on such corporation, association, or partners, or the person so indebted to give notice forthwith to the Public Trustee of the extent, nature, and situation of such property, or of fact and extent of such indebtedness.

Inquiries as to  
property.

**54**—(1) In any case where the Public Trustee believes, on reasonable grounds, that any person has in his possession or under his control any personal property, not exceeding Two hundred Pounds in value, to which the Public Trustee is entitled, the Public Trustee may apply to the Court for a summons calling upon such person to furnish full particulars of such property and the nature and extent thereof.

(2) Upon the hearing of any such summons the Court may make such order as to any such property, and as to the transfer, delivery, or payment thereof to the Public Trustee or otherwise as the Court may think necessary.

(3) If, upon the hearing of any such summons, the Court is of opinion that the matter is one which should not be determined upon such summons, the Court may dismiss the application upon such terms as to costs as it may think fit.

*Public Trust Office.*

A.D. 1930.

*Public Trustee Entitled to Costs.*

**55** In any legal proceedings to which the Public Trustee is a party, or in which he is in any way interested and is represented by the Solicitor to the Public Trust Office, the Public Trustee shall be entitled to the same costs, fees, and allowances as if he had been represented by counsel or solicitor not permanently employed in the Public Trust Office.

Right of Public Trustee to costs in legal proceedings.

*Claims Against Estates.*

**56** In the administration of any estate the Public Trustee may—

Allowance of claims, &c.

- I. Allow any claim made upon him in respect of the estate upon the affidavit or statutory declaration only of the claimant, or of some person on his behalf, or may require such further evidence as he may think necessary:
- II. Require proof by affidavit or statutory declaration that any person is living and is the person to whom any property is payable or transferable, and may refuse payment or transfer until such proof is furnished to him:
- III. In respect of any estate which does not exceed Five hundred Pounds in value, if acting in good faith, accept the written statement, affidavit, or statutory declaration of any person whom he believes to be trustworthy as to any birth, death, marriage, or other matter of pedigree or relationship, or other fact upon which the title to the estate or any part thereof may depend—

and shall not incur any liability in any of the said cases by so doing.

**57**—(1) When any claim is made by any person, whether as a creditor or otherwise, against an estate, the Public Trustee, if in doubt as to the validity of such claim, may institute such inquiries as he thinks proper regarding such claim, and, by a notice in writing under his hand, may require the claimant and any other persons to appear before the Court to answer on oath all questions that may be put to them respectively with reference to such claim.

Public Trustee may hold inquiry as to validity of claim against estate.

(2) The Public Trustee shall pay or tender to any person so summoned the amount to which such person would be entitled if he were summoned as a witness to appear before the Court.

(3) If, without valid excuse, the claimant fails to attend pursuant to such notice, or refuses or fails to answer truly any

*Public Trust Office.*

A.D. 1930.

relevant question put to him by or on behalf of the Public Trustee, it shall be lawful for the Public Trustee, by direction of the Court, to reject the claim.

Where Public Trustee may distribute assets after notice of rejection of claim of creditor.

**58—**(1) Whenever the Public Trustee refuses to recognise the whole or part of the claim of any person who claims to be a creditor against the estate of any deceased person, he may give notice in writing of such refusal to such person, and, if such person does not, within one month after the receipt of such notice or such further time as the Public Trustee may by such notice appoint, institute proceedings to enforce such claim, it shall be lawful for the Public Trustee to distribute the assets of such deceased person without regard to the claim, or to so much thereof as the Public Trustee has by the said notice refused to recognise, and thereupon the right of such person to recover the amount of the claim, or the portion thereof, which the Public Trustee has by the said notice refused to recognise, shall be absolutely barred.

(2) For the purposes of this section a notice may be served on any such person by post, in a registered letter addressed to the address given in the claim, and every such notice shall be deemed to have been received by such person in the ordinary course of post, unless the Public Trustee has notice to the contrary before the distribution of the assets of such deceased person.

*Dissatisfied Beneficiaries.*

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

**59** In the case of any estate in the Public Trust Office—

- 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 to the Court and, upon any such application, the Court may make such order in the premises as it thinks just.

Beneficiary aggrieved may apply to court.

*Notice Before Closing Testate or Intestate Estate.*

Provisions for closing administration of estate after notice.

**60—**(1) When a testate or intestate estate is under administration by the Public Trustee, he may—

- I. Publish once in each week for two consecutive weeks in at least one newspaper published in or circulating in the locality in which the deceased resided or



*Public Trust Office.*

carried on business immediately prior to his decease, or, if the deceased died out of this State, then in such newspaper or newspapers as the Public Trustee may think fit, a notice requiring all persons having claims against the said estate, whether as creditors or otherwise, to send in such claims to the Public Trustee within the time limited in such notice, being not less than one month from the first publication of such notice: A.D. 1930.

- II. Upon the expiration of the time limited in such notice, 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:
- III. Where any such estate is of less value than Fifty Pounds, distribute the same without giving any such notice as aforesaid.

(2) The Public Trustee shall not be liable for the assets so distributed, or any part thereof, to any person of whose claim he has no notice at the time of distribution thereof, but this provision shall not prejudice the right of any subsequent claimant to enforce his claim against the persons who have benefited by such distribution to the extent of such benefit.

(3) For the purposes of this section, 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" respectively have a corresponding meaning.

(4) The provisions of this section shall not prevent the Public Trustee, as executor or administrator, from making distributions under any other law or statute, or prejudice the protection thereby afforded, where he makes distribution pursuant to such law or statute.

*Insolvent Estates.*

**61**—(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 proper expenses 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 charges incurred for the medical treatment of the deceased for the period not exceeding three months immediately preceding the death of the deceased,

Payment of claims when assets are insufficient.

*Public Trust Office.*

A.D. 1930.

(2) For the purposes of this section—

“Funeral charges” shall include charges for the erection of a tombstone and curbing over the grave of the deceased:

“Charges for medical treatment” shall include the expenses of a registered pharmaceutical chemist, a registered practising nurse, and reasonable hospital and maintenance expenses in any private or public hospital, as defined by the Hospitals Act, 1918, or in any institution or asylum supported wholly or in part from local rates or public funds.

9 Geo. V. No. 70.

*Payment of Small Sums.*

Public Trustee may make payment of sums of less than £50 without order.

**62** Where under this or any other Act the Public Trustee is directed to make any payment, upon an order of any competent Court 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 such Court.

Payment of moneys without probate or letters of administration.

**63**—(1) In case of the death of any person, either before or after the commencement of this Act, to whom any sum of money not exceeding Twenty-five Pounds was or is payable by the Public Trustee, it shall be lawful for the Public Trustee to pay such sum or any part thereof to any person whom the Public Trustee shall consider entitled thereto without requiring probate or letters of administration to be taken out or produced to him.

(2) Any such payment shall be valid against all persons whatsoever, and shall discharge the Public Trustee from all liability in respect of the sum so paid.

(3) Nothing in this section shall prevent any person lawfully entitled to any sum so paid from recovering the same from the person to whom the same has been paid.

*Auction Sales.*

Sale of property by auction.

**64** Where the Public Trustee is realising the property of any estate administered by him, and such property is not of greater value than Fifty Pounds, and is situated at a distance of more than ten miles from any place of business of a licensed auctioneer, such property 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 be required to take out an auctioneer's licence.

*Public Trust Office.*

A.D. 1930.

*Directions as to Distribution of Estates.*

**65**—(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 the person who would, if living, be entitled thereto be alive or dead, or where that person is, the Public Trustee may apply to the Court for directions as to the manner in which such estate or part thereof shall be distributed.

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

(2) On such application, the Court may 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 of compliance with such order, and that such person has not sent in any claim, the Court, by further order, may authorise the Public Trustee to distribute such estate, or any part thereof, without regard to the claim of such person, or any person 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) The provisions of this section shall not—

- I. Prejudice or affect the right of any person to follow the estate or part thereof into the hands of the person who has received the same pursuant to such distribution: or
- II. Prejudice the right of the Public Trustee to distribute such estate or part thereof under any other law or statute, or prejudice the protection thereby afforded, where he makes distribution pursuant to such law or statute.

*Payment to Persons Outside Tasmania.*

**66**—(1) Where any personal estate is payable or deliverable by the Public Trustee to the subject of any country out of His Majesty's jurisdiction, the Minister may authorise the Public Trustee to pay or deliver the same to any specified official of that country, or to any consular officer for, or accredited agent of, that country on behalf of the person entitled.

Personal estate payable to subject of foreign country may be paid to specified official of that country

(2) Where personal estate is payable or deliverable by the Public Trustee to any person in any British possession the Minister may authorise the Public Trustee to pay or deliver the same to any specified official of such possession on behalf of the person entitled.

Personal estate payable to any person in any British possession may be paid to specified official of such possession.

*Public Trust Office.*

A.D. 1930.

(3) The receipt of such official, consular officer, or agent shall be a sufficient discharge to the Public Trustee, who shall not be further concerned to see to the application of such personal estate.

*Reciprocity with Public Trustees of other Countries.*

Reciprocity with  
Public Trustee in  
Australian States,  
New Zealand, or  
England.

**67** Where the Public Trustee is administering the estate in Tasmania of a person, who at the time of his death was domiciled in one of the States of the Commonwealth or in the Dominion of New Zealand or in England, and whose estate there is being administered by the Public Trustee or Public Curator of such State or Dominion or of England, the Public Trustee may pay over to the Public Trustee or Public Curator of such State or Dominion or of England, as the case may be, the balance of the proceeds of the estate in Tasmania of the said person, after payment of creditors and the charges provided for under this Act, without incurring any liability in regard to the payment of such balance and without any obligation to see to the application thereof.

*Service of Orders on Public Trustee.*

Service of orders  
on Public Trustee.

**68**—(1) When any court or judge, except upon the application of the Public Trustee, makes an order under this Act, or which in any way affects the Public Trustee, it shall be the duty of the person who obtains such order forthwith to serve upon the Public Trustee a copy thereof, and to deliver to the Public Trustee a statement of the property affected by the order, showing where such property is situated or by whom held, so far as the same is known to such person, and such other information as the Public Trustee shall reasonably require, and in default thereof such person, unless he proves that such default was due to accident or was unavoidable, shall be liable to a penalty of Ten Pounds.

Registrar, &c.,  
of court  
to see that copy  
of order sent to  
Public Trustee.

(2) When any such order is made, it shall be the duty of the registrar or deputy-registrar or clerk, as the case may be, of the court, to deliver or post by registered letter to the Public Trustee, a copy of such order, unless to his knowledge the Public Trustee has received a copy thereof.

*Certificate of Public Trustee to be Accepted as Evidence.*

Certificate of  
Public Trustee.

**69**—(1) A certificate under the hand of the Public Trustee and sealed with his seal, certifying the nature of his appointment in relation to any estate, and any facts on the happening of which such appointment was made, shall be accepted by all courts, officers, and other persons as sufficient evidence of all the facts therein set forth, without production of any other proof whatever.

*Public Trust Office.*

(2) Such certificate shall be sufficient for the purpose of registering the Public Trustee as proprietor of any shares, stock, or property in any company, body, or association, or of any estate or interest in any land under the Real Property Act, or of bringing any land under that Act, and may be registered against such land as in the case of probate or letters of administration, and shall have the same force and effect.

A.D. 1930.

25 Vict. No. 16.

(3) Such certificate shall be equivalent, for registration purposes under any Act, to probate or letters of administration, and it shall not be necessary to register such probate or letters of administration.

*Services of Notices.*

**70** Where under this Act notice is required to be given by the Public Trustee or any officer, servant, or person, acting 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.

Service of notices  
by Public Trustee.*Personal Liability of Public Trustee and his Officers.*

**71**—(1) Neither the Public Trustee, the Deputy Public Trustee, nor any officer or servant of the Public Trustee, acting, or assuming in good faith to act, under any authority conferred by this Act, shall be personally liable for any act or thing done or omitted, unless such liability arises from his fraud or crime.

Public Trustee  
and his officers  
not to be personally  
liable except  
in case of fraud  
or crime.

(2) 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.

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

(3) 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.

Liability of office  
solicitor to be  
borne by Public  
Trust Office.*Remedy Against Public Trustee.*

**72** Subject to this Act, where any person sustains injury through any act or omission of the Public Trustee, or of any person acting in good faith for him, and such injury would have entitled such person to a remedy in respect thereof if such act or omission had been that of a private individual, such person shall be entitled to the same remedy against the Public Trustee in his corporate capacity as he would have against a

Remedy against  
Public Trustee.

*Public Trust Office.*

A.D. 1930.

private individual, and shall be entitled to be indemnified out of the Public Trustee's Account, and, if the same be insufficient, then out of such moneys as may be provided by Parliament for that purpose.

*Procedure.*

Mode of applica-  
tion to judge

**73** In any case in which under this Act the Public Trustee or any other person is authorised to apply to the Court—

- I. The application shall be by petition or summons, and shall be supported by such statement of facts, documents, or other information as the Court may require:
- II. Notice of such application shall be given to such persons as the Court may direct:
- III. Upon the hearing of such application, the Court may make such order, including an order as to payment of the costs of such application, as it shall think fit: and
- IV. The Public Trustee or such other person acting in accordance with any order made hereunder shall be fully indemnified accordingly, unless he has been guilty of fraud or wilful concealment or misrepresentation.

Public Trustee  
may take opinion  
of judge.

**74**—(1) In respect of any estate which does not exceed Four hundred Pounds in value, the Public Trustee, without instituting any proceedings against any person, may seek the opinion or obtain the direction of a judge upon any question, whether of law or fact, arising in the course of his duties.

(2) Any such question shall be submitted by petition or summons at such time as the judge may direct, and shall be accompanied by such statement of facts, documents, or other information as he may require, all of which shall be verified by affidavit, and the Public Trustee or anyone authorised by him, if the judge so directs, shall attend upon the judge at such time and place as the judge may appoint.

(3) The judge, before giving his opinion or direction, may require the attendance of, or communication with, any person interested in the subject-matter of such question, but no such person shall have a right to be heard unless the judge so directs.

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

(5) The Public Trustee, in acting on such opinion, direction, or decision, shall be fully indemnified.

*Public Trust Office.*

**75** The judges of the Court may make general or special rules for the purpose of regulating any proceedings under this Act.

A.D. 1930.

Power to make rules.

*Validation.*

**76**—(1) Where the Public Trustee, believing in good faith that any person has died testate or intestate, as the case may be, obtains probate or administration of the estate of such person, or administers the same under statutory power, or is appointed or acts as trustee under a will of such person, and subsequently it is found that—

Validation of acts of Public Trustee acting under probate or administration granted in error.

- I. Such person is still living: or
- II. Such person did not die testate, or intestate, as was so believed:
- III. A later will of such person exists altering or revoking the will upon which the Public Trustee has acted—

all acts and omissions of the Public Trustee in relation to the estate of such person shall be as valid and effectual as if such belief as aforesaid had not been erroneous.

(2) Proof that such belief as aforesaid was not held in good faith shall be upon the person who alleges the same.

(3) All orders heretofore made by the Court, appointing the Public Trustee to be sole trustee for any of the purposes of the Settled Land Act, 1884, or to be committee of the estate or person of a person of unsound mind, shall be deemed to be as valid and effectual as if the same had been made under this Act.

Validation of certain orders obtained by Public Trustee under 3 Geo. V. No. 26. 48 Vict. No. 10.

*Certain Acts to be Subordinate to this Act.*

**77** The following Acts:—

- The Deceased Persons Estates Act, 1874;
- The Probate Act, 1893;
- The Settled Estates Act, 1882;
- The Settled Land Act, 1884;
- The Trustee Act, 1898—

Certain Acts to be read subject to provisions of this Act.

38 Vict. No. 1.  
57 Vict. No. 14.  
46 Vict. No. 7.  
48 Vict. No. 10.  
62 Vict. No. 34.

shall be read and construed as subordinate to the provisions of this Act, and in such manner as not contrarily to affect the same.

*Regulations.*

**78** The Governor may make regulations with respect to all or any of the following matters, namely—

Regulations.

- I. The conduct of the business of the Public Trust Office:
- II. Determining the powers and duties of the officers, servants, and persons employed therein:

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*Public Trust Office.*

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A.D. 1930.  
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- III. The custody of all property placed therein, and the trust instruments and instruments of title relating thereto:
- IV. The receipt and payment of moneys under this Act:
- V. The payment or non-payment of interest on moneys belonging to any estate, and the period from which interest, if allowed, is to be computed:
- VI. Keeping, rendering, and auditing accounts under this Act:
- VII. The transfer to and from the Public Trustee of any property:
- VIII. The forms of mortgages, leases, certificates, and other official instruments and documents to be used in the conduct of the business of the Public Trustee:
- IX. Fixing scales of fees and other charges to be made by the Public Trustee under this Act:
- X. 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:
- XI. 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:
- XII. Any other matter which by this Act is directed to be prescribed, or for which regulations are contemplated by this Act, or any other matter, object, or purpose which he thinks necessary for giving full effect to this Act, or for the efficient administration of the Public Trust Office.