New Zealand.

ANALYSIS.

Title.
1. Short Title.
2. Interpretation.
3. How jurisdiction of Court under this Act to be exercised.
4. Court may in certain circumstances make protection-order in respect of person and property.
5. Court may make protection-order under this Act in respect of estate of person addicted to excessive use of alcoholic liquors, &c.
6. Application for protection-order, how to be made.
7. Court, by protection-order, to appoint manager of estate. Variation of order.
8. Public Trustee may be appointed manager.
9. Manager may be required to give security.
10. Statutory powers of manager.
11. Court may confer additional powers on manager.
12. Court may authorize continuance of provision made by protected person for person dependent on him.
13. Application of unapplied portion of estate.
14. Court may confer on manager power to sell, mortgage, lease, or otherwise dispose of protected estate.
15. Court may exempt part of protected estate from operation of protection-order.
16. Co-managers to concur in all acts in relation to protected estate.
17. Manager to be deemed a trustee.
18. Manager to file statement as to estate.
19. Percentage of moneys collected by manager to be paid into Public Trust Account.
20. Manager exempt from personal liability in respect of contracts, &c.
21. Proceedings in respect of protected estate.
22. Manager may with consent of Court exercise powers vested in protected person.
23. Manager may execute assurances, &c.
24. Restriction of powers of protected person.
25. Protection-orders may be registered under Deeds Registration Act or Land Transfer Act.
26. Court may restrict testamentary powers of protected person.
27. Operation of Act not limited by Mental Defectives Act.
28. Expenses of administration and remuneration of managers.
29. Change of managers.
30. Rules of procedure, &c.
Schedule.

1912, No. 26.

AN ACT to make Provision for the Protection of the Property of Aged and Infirm Persons. [*7th November, 1912.* Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Aged and Infirm Persons Protection Act, 1912. Short Title.

2. In this Act, except where a different intention appears from the context or subject-matter,— Interpretation.

"Court" means the Supreme Court of New Zealand:

"Manager" means a person appointed to be manager under this Act; and, where more than one person is appointed, means either all the persons so appointed or each of such persons as the context requires:

"Prescribed" means prescribed by this Act or by any rules made thereunder:

"Protected estate" means the real and personal estate of a protected person, or such part thereof as shall be the subject-matter of a protection-order:

"Protected person" means a person who or whose estate becomes the subject of a protection-order under this Act.

How jurisdiction of Court under this Act to be exercised.

3. The whole jurisdiction of the Court under this Act may be exercised by any Judge of the Court either in Court or in Chambers.

Court may in certain circumstances make protection-order in respect of person and property.

4. Where it is made to appear to the satisfaction of the Court that any person is, by reason of age, disease, illness, or physical or mental infirmity,—

(*a.*) Unable, wholly or partially, to manage his affairs; or

(*b.*) Subject to, or liable to be subjected to, undue influence in respect of his estate, or the disposition thereof, or of any part thereof; or

(*c.*) Otherwise in a position which in the opinion of the Court renders it necessary in the interest of such person or of those dependent upon him that his property should be protected as provided by this Act,—

the Court may make a protection-order in the form or to the effect in the First Schedule to this Act in respect of the estate or part of the estate of such person.

Court may make protection-order under this Act in respect of estate of person addicted to excessive use of alcoholic liquors, &c.

5. Where it is made to appear to the satisfaction of the Court that any person is, by reason of his taking or using in excess alcoholic liquors, or any intoxicating, stimulating, narcotic, or sedative drug, unable, wholly or partially, to manage his affairs, whether such inability is continuous or occasional, the Court may make a protection-order in or to the effect of the form in the Second Schedule hereto, anything in the Reformatory Institutions Act, 1909, or in any other Act to the contrary notwithstanding.

Application for protection-order, how to be made.

6. (1.) Every application for a protection-order shall be made by petition to the Court, and may be made—

(*a.*) By the person whose property is sought to be protected;

(*b.*) By the husband or wife of such person;

(*c.*) By any near relation by blood or marriage of such person;

(*d.*) By the Public Trustee; or

(*e.*) By any other person who shall adduce proof of circumstances which in the opinion of the Court make it proper that such other person should make the application.

(2.) Where the application is made by any other person than the person whose property is sought to be protected, the petition shall be served upon such last-mentioned person, unless the Court shall in any special case otherwise direct.

Court, by protection-order, to appoint manager of estate.

7. (1.) If the Court shall think fit to grant such application, the Court shall, in and by the protection-order, appoint the husband or wife or near relation by blood or marriage of the protected, person, or some other person, or limited company, or partnership of merchants or accountants, either alone or with any other person or persons, or the Public Trustee alone, to be the manager to take possession of

and to control and manage all or such part or parts of the estate of the protected person as the Court may direct.

(2.) A protection-order may be varied or rescinded wholly or in part from time to time as to the Court shall seem fit, either during the lifetime of the protected person or at such time after the death of the protected person as the Court shall determine. Variation of order.

8. The Court may in any case appoint the Public Trustee alone to be manager, but shall not appoint any person to be manager together with the Public Trustee. Public Trustee may be appointed manager.

9. The Court may, if it thinks fit, require any manager other than the Public Trustee to give such security as to the Court seems fit for the due performance of the duties of manager. Manager may be required to give security.

10. The manager shall have the following powers, unless the Court shall in any particular case otherwise order:— Statutory powers of manager.

(*a.*) To take possession of the protected estate, and to recover possession thereof from any person holding the same:

(*b.*) To repair and insure against fire or accident any part of the estate:

(*c.*) To demand, recover, and receive moneys and personal effects payable to or belonging to the protected person:

(*d.*) To apply any moneys (whether arising from real or personal property, and whether income or capital) for the maintenance of the protected person, and the wife or husband, and the children of the protected person, and for the education of the children of the protected person, and in payment of the debts and liabilities of the protected person:

(*e.*) To carry on any trade or business theretofore carried on by the protected person, and to carry on the business of any partnership in which the protected person may be a partner.

11. The manager shall have such other powers and duties in respect of the protected estate as the Court shall in and by the protection-order, or from time to time, define or direct, and the Court shall have jurisdiction to confer such powers upon the manager or managers to be exercised generally in respect of the estate or part thereof, or upon any special occasion, or in respect of any particular subject-matter. Court may confer additional powers on manager.

12. Where the protected person has, before the making of the protection-order, made provision of any nature, whether regular or casual, for any person wholly or partially dependent on him, whether a relation or not, the Court may in its discretion authorize the manager to continue such provision out of the protected estate. Court may authorize continuance of provision made by protected person for person dependent on him.

13. (1.) The manager shall apply such part of the corpus and income of the protected estate as is not required for the purposes specifically defined in this Act in such manner as the Court from time to time directs. Application of unapplied portion of estate.

(2.) The Court may direct the investment of the unapplied corpus or income of the protected estate in such investments as the Court from time to time deems proper in the interest of the protected person or of those dependent upon him, and the Court shall not be limited in respect of any such direction to such securities as are authorized for investment of trust-moneys.

Court may confer on manager power to sell, mortgage, lease, or otherwise dispose of protected estate.

14. The Court may direct the sale, mortgage, lease, or other disposition of the whole or any part of the protected estate by the manager; and may confer upon the manager any powers in respect of or in relation to the protected estate which it may deem necessary or expedient for the realization, investment, or better management thereof, or for the benefit or advancement in life of the children of the protected person; and, in particular, may confer any powers which the Court may under any law or practice relating to trustees or to wards of Court confer upon trustees or itself exercise.

Court may exempt part of protected estate from operation of protection-order.

15. The Court may in any case by the protection-order, or from time to time, except from the estate to be taken possession of and controlled by the manager any part or parts of the estate of the protected person, and permit such part or parts to remain in the uncontrolled possession of the protected person, or of the wife or husband or children of the protected person.

Co-managers to concur in all acts in relation to protected estate.

16. Where more than one manager is appointed all the managers must concur in every act, matter, and thing done in relation to the protected estate.

Manager to be deemed a trustee.

17. A manager shall be deemed to be a trustee for all the purposes of the Trustee Act, 1908, and, in particular, shall have the rights and immunities defined by sections seventy-five, seventy-six, and seventy-seven of that Act.

Manager to file statement as to estate.

18. (1.) The manager of every protected estate shall, at such times and in such manner as prescribed, prepare and file in the Court a statement, verified by the affidavit of the manager, showing the property comprised in such protected estate, and the condition thereof, and the manner in which such property has been dealt with, administered, or applied, and such other particulars as may be prescribed, or as may be in any special case directed by the Court to be included in such statement.

(2.) In any case in which the manager is not the Public Trustee the manager shall forthwith after filing every such statement deliver to the Public Trustee a duplicate thereof, and shall thereafter exhibit to the Public Trustee such accounts and vouchers in relation thereto as the Public Trustee may require.

(3.) If any manager fails or refuses to file any such statement at the times and in the manner prescribed, or to deliver to the Public Trustee a duplicate thereof as aforesaid, or to exhibit to the Public Trustee any such accounts or vouchers as aforesaid, he shall be liable to a penalty not exceeding fifty pounds for every such offence.

(4.) The Public Trustee shall cause every such statement delivered to him to be examined and reported upon either by himself or by any person he may appoint in that behalf, and shall cause such report to be filed in the Court and a copy thereof to be transmitted to the manager by whom such statement has been delivered.

Percentage of moneys collected by manager to be paid into Public Trust Account.

19. Where any person other than the Public Trustee is appointed manager in pursuance of this Act there shall be payable out of the protected estate by the manager to the Public Trustee, for the services rendered by him in respect of such estate, such remuneration as the Court may from time to time direct:

Provided that in no case shall such remuneration exceed a sum equivalent to one pound for every hundred pounds of the moneys

coming under the control of the manager and forming part of the protected estate.

Manager exempt from personal liability in respect of contracts, &c.

20. A manager acting in pursuance and exercise of any powers or duties conferred or imposed upon him by this Act or by the Court shall not be personally liable in respect of any contract or engagement entered into with or any liability incurred to any person unless the manager shall have concealed from such person the fact that he was acting therein on behalf of the protected estate, but the protected estate shall be liable in respect of all such contracts, engagements, or liabilities, and the same may be enforced by proceedings against such manager in his official capacity.

Proceedings in respect of protected estate.

21. (1.) The petition shall be the commencement of proceedings, which shall remain open for application to be made therein from time to time to the Court by the manager, or the protected person, or by any relation of the protected person, or by any person interested in the protected estate. After such notice or service as the Court thinks fit to direct, any person may be made party to such proceedings generally or in any particular matter, and the Court may grant and enforce against such party in matters relating to the protected person or the protected estate all judgments, orders, and remedies, including injunction and mandamus, as the Court might grant and enforce in an action against such party at the suit of the protected person or of the manager:

Provided that if such party shall require that an issue or issues of fact shall be stated and tried by the Court as upon the trial of an ordinary action, the Court shall direct that an issue or issues of fact be so stated and tried as between the manager in the name of the protected person and such party.

(2.) Upon any application to the Court by the manager after the making of the protection-order, it shall be necessary to serve with notice of such application only such persons or parties (if any) as the Court shall on such application require to have notice thereof.

(3.) The Court may at any time discharge any party made party to the proceedings.

Manager may with consent of Court exercise powers vested in protected person.

22. When a power is vested in any protected person in the character of trustee or guardian, or the consent of any protected person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, the manager may, in the name and on behalf of the protected person, and under an order of the Court made on the application of any person interested, exercise the power or give the consent in such manner as the order directs.

Manager may execute assurances, &c.

23. The manager may, in the name and on behalf of the protected person, execute and do all such conveyances, transfers, leases, deeds, assurances, and things as may be necessary for effectuating any of the powers conferred upon him by this Act or by any order of the Court.

Restriction of powers of protected person.

24. (1.) A protected person shall be incapable, without the leave of the Court, of making any transfer, lease, mortgage, or other disposition of such part of his estate as is the subject-matter of a protection-order or of any subsequent order, or of

entering into any contract, except for necessaries; and every such transfer, lease, mortgage, or other disposition and every contract other than for necessaries shall be void.

(2.) Nothing in this section shall invalidate any transfer, lease, mortgage, disposition, or contract made or entered into by a protected person for valuable consideration if the other party thereto acted in good faith and without notice that a protection-order had been made.

Protection-orders may be registered under Deeds Registration Act or Land Transfer Act.

25. (1.) A protection-order may be registered under the provisions of the Deeds Registration Act, 1908, as an instrument affecting the title to any land wherein the protected person has any estate or interest, legal or equitable.

(2.) A protection-order shall be deemed to be an instrument purporting to affect land under the provisions of the Land Transfer Act, 1908, and a memorial thereof may accordingly be entered upon the register of any land in respect whereof the protected person is the registered proprietor of any estate or interest under the provisions of that Act.

(3.) The manager, in the name and on behalf of the protected person, may lodge a caveat in respect of any land under the provisions of the Land Transfer Act, 1908, to or in which the manager claims that the protected person is entitled or beneficially interested.

Court may restrict testamentary powers of protected person.

26. (1.) The Court may direct in any case that any testamentary disposition by a protected person after the making of a protection-order shall be made only after such precautions as the Court thinks fit to direct, and any testamentary disposition made otherwise than as the Court shall so direct shall be ineffectual for all purposes.

(2.) The Court may, by such means as it thinks fit, cause inquiries to be made as to the existence of any will or codicil made and executed by the protected person prior to the making of the protection-order (whether such will or codicil was made before or after the passing of this Act), and may direct that any such will or codicil shall be deposited in the Court. If it shall appear to the Court that such will or codicil was made when the person making the same was subject to any of the incapacities defined in section four or five of this Act, the Court may inspect such will or codicil, and may cause inquiries to be made, in such manner as to the Court seems fit, whether such will or codicil expresses the present desire and intention of the protected person, and, if satisfied to the contrary, may, in any case where such course is possible, cause the present desire and intention of the protected person to be ascertained to its satisfaction, and may authorize the execution by the protected person of a new will disposing of his estate in accordance with such present desire and intention.

(3.) Except as provided in this section, nothing in this Act shall affect the law relating to testamentary dispositions.

Operation of Act not limited by Mental Defectives Act.

27. (1.) An order for the appointment of a manager may be made under this Act, although it may appear to the Court that the person protected is a mental defective or that the estate is one which might be administered under the Mental Defectives Act, 1911.

(2.) The powers and authorities of a manager appointed under this Act shall, unless the Court otherwise orders, continue notwithstanding that the person of whose estate the manager is appointed becomes a mental defective.

Expenses of administration and remuneration of managers.

28. (1.) All expenses properly incurred by the manager in respect of the maintenance of the protected person, or the administration of the protected estate, shall be charged against and payable out of that estate; and, in addition, there shall be payable in respect of all moneys forming part of the protected estate, and coming under the control of the manager, such remuneration by commission or otherwise to the manager, and such other charges, as are allowed by the Court.

(2.) The expenses, remuneration, and other charges aforesaid shall be payable out of the estate, although the protected person dies or the protected estate otherwise ceases to be under the administration of the manager before payment thereof.

Change of managers.

29. (1.) The Court may at any time, on the application of the manager, or on the application of the protected person or of any other person, on proof that there is good cause for so doing, make an order appointing any other person or persons as the manager of the estate in lieu of the manager.

(2.) The Court may at any time, on the application of the protected person, or of the manager, or of any other person, rescind the order appointing the manager, on proof that the protected person is of sufficient ability to manage his own affairs.

Rules of procedure, &c.

30. The Governor in Council, with the concurrence of the Judges of the Supreme Court, or any two of them, may from time to time make rules determining the fees to be charged and paid in any proceedings under this Act, and regulating the form and mode of procedure in all matters under this Act and for carrying into effect the several objects of this Act.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

FORM OF PROTECTION-ORDER UNDER SECTION 4.

In the Supreme Court of New Zealand,
District.

In the matter of the Aged and Infirm Persons Protection Act, 1912,
and in the matter of the estate of , of .

The day of , 19 .

UPON the petition of , it having been made to appear to the satisfaction of the Court that a protection-order under the provisions of section 4 of the above Act ought to be made in respect of the above-named , this Court doth make a protection-order accordingly, and doth order that be appointed manager of the estate [*or* of a defined part of the estate, describing the same; *or* of the whole estate, excepting a defined part or parts] of the said , with the powers and duties defined in the said Act [*or* and with the following further powers and duties].

By the Court.

SECOND SCHEDULE.

FORM OF PROTECTION-ORDER UNDER SECTION 5.

In the Supreme Court of New Zealand,
District.

In the matter of the Aged and Infirm Persons Protection Act, 1912, and in the matter of the estate of , of .

The day of , 19 .

UPON the petition of , it having been made to appear to the satisfaction of the Court that a protection-order under the provisions of section 5 of the above Act ought to be made in respect of the above-named , this Court doth make a protection-order accordingly, and doth order that be appointed manager of the estate [*or* of a defined part of the estate, describing the same; *or* of the whole estate, excepting a defined part or parts] of the said , with the powers and duties defined in the said Act [*or* and with the following further powers and duties].

By the Court.