

(Hon. Mr. Vogel.)

Public Trust Office.

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A BILL INTITULED

AN ACT to establish a Public Trust Office.

Title.

WHEREAS it is expedient to make provision for the custody and management of certain property held in trust within the Colony of New Zealand:

Preamble.

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

- Short Title. 1. The Short Title of this Act is "The Public Trust Office Act 1871."
- Interpretation. 2. The word "property" in this Act means every kind of property both real and personal and includes all income and proceeds accruing therefrom. 5
- Public Trust Office. 3. There shall be an office called the Public Trust Office administered by an officer called the Public Trustee, who shall be appointed and may be removed from office by the Governor in Council.
- Public Trustee a Corporation sole. Common Seal. 4. The Public Trustee is hereby constituted a Corporation sole for the purpose of this Act with perpetual succession and a seal of office which shall be kept and used by the Public Trustee only. 10
- Public Trustee not to have seat in Parliament. 5. The Public Trustee shall be incapable of having a seat in the Executive Council or in either House of the General Assembly or in any Provincial Council or of entering into any contract with the General or any Provincial Government for any gain or profit or of engaging in any trade or business except as a shareholder in any public company or of becoming the trustee executor agent or attorney of any person or persons in respect of any property other than as provided by this Act. 15
- Governor may appoint other officers. 6. The Governor may from time to time appoint such officers and servants in the Public Trust Office as may be necessary for the custody and management of the property placed therein and such officers and servants shall hold their several offices at the Governor's pleasure. 20
- Salary of Public Trustee. 7. The salary of the Public Trustee shall be eight hundred pounds a year but if the Governor is of opinion that the duties and responsibilities of the office require an increase and that the revenues of the Public Trust Office are sufficient to provide for the same the Governor may increase such salary to any sum not exceeding one thousand pounds a year and if the Governor is of opinion that the office of Public Trustee may at the first institution thereof be temporarily held by some other officer in the Public Service the Governor may assign such lesser salary to the office of Public Trustee as he thinks fit. The other officers and servants in the Public Trust Office shall until the end of the next Session of the General Assembly receive such salaries as the Governor directs. 25 30
- And of other officers. 8. The Public Trustee and any other officer or servant in the Public Trust Office shall give security for the faithful discharge of the duties of his office in such form by such sureties and to such amount as the Governor directs. 35
- Officers to find security. 9. The Governor may by Order in Council make and from time to time revoke or alter regulations for the conduct of the business in the Public Trust Office and for determining the duties of the officers and servants employed therein and for the custody of the property placed therein and for fixing scales of charges upon such property for the cost of managing the same and for the receipt and payment of moneys belonging to or accruing from such property and for keeping rendering and auditing accounts of such moneys and for directing in what Bank the same shall be kept and for determining what part of and in what securities such moneys shall be invested and for the safe custody of such securities: Provided that no such regulation shall be repugnant to any of the provisions of this Act. 40 45 50
- Regulations. 10. When any doubt arises in the administration of this Act or the Regulations aforesaid or the Orders in Council hereinafter mentioned or as to the powers or duties of the Public Trustee or any other person thereunder the Colonial Treasurer with the advice of the Attorney-General but not otherwise shall absolutely determine the same. 55
- In cases of doubt Colonial Treasurer to decide. 11. The Governor may by Order in Council place in the Public Trust Office any property held in trust for the benefit of private persons or public bodies or communities by the Crown or by the 60
- Public trust property may be placed in Public Trust Office.

Governor or by officers or trustees appointed by the Governor in virtue of any Act in that behalf and from and after the date of any such Order in Council the property to which it relates shall become vested in the Public Trustee subject to the trusts attaching thereto and to the provisions of this Act for the custody disposal or management thereof and every such Order in Council shall define the nature and extent of the powers intended thereby to be vested in the Public Trustee in respect to the property to which such Order relates and when any such property is placed in the Public Trust Office all the duties powers and responsibilities of the officers trustees or other persons theretofore holding or administering the same shall cease and such officers trustees or other persons shall forthwith hand over to the Public Trustee all deeds papers and moneys belonging to or relating to such property.

12. The Governor may by Order in Council revoke any former Order in Council placing any property in the Public Trust Office and may by any such Order revoke or alter the powers vested in the Public Trustee in respect to any such property.

Or removed therefrom.

13. Any private person public or other company or charitable or other public body within or without the Colony of New Zealand may subject to the provisions of this Act place any property belonging to or vested in him or them or within his or their lawful custody or control in the Public Trust Office by deed or will conveying such property to the Public Trustee upon the trust and for the uses and with the powers in such deed or will expressed and defining the nature and extent of the powers intended to be vested in the Public Trustee in respect of such property: Provided that nothing in this section shall be deemed to give any such person company or body any further powers of disposing of any such property or of creating any further powers thereover, or of attaching any other trusts thereto than he or they might have exercised without this Act.

Private trust property may be placed in Public Trust Office.

14. Upon the receipt of any such deed or will the Public Trustee shall forthwith refer the same to a Board consisting of the Colonial Treasurer the Government Annuities Commissioner the Attorney-General the Auditor and the Public Trustee of whom three shall be a quorum and which is hereinafter called "the Board" and if the Board is of opinion that the property intended to be conveyed and the powers intended to be created are duly conveyed and created thereby and that the property therein referred to may be administered by the Public Trustee in accordance with the conditions of the said deed or will with due regard to the public service and to the objects and provisions of this Act the Public Trustee being so instructed by the Board shall indorse thereon a statement of the acceptance thereof. But if the Board shall be of the contrary opinion then the Public Trustee being so instructed by the Board shall indorse thereon a statement of the rejection thereof.

Board to decide whether private property shall be placed in Public Trust Office.

15. When any deed or any will in which any executor is appointed other than the Public Trustee is accepted the Public Trustee shall forthwith send a written notice thereof to each person executing such deed or appointed executor under such will as the case may be and when any such deed or will is rejected the Public Trustee shall forthwith send the same to any person executing such deed or to any executor under such will as the case may be; and when a will is rejected in which no executor other than the Public Trustee is appointed the Public Trustee shall forthwith publish a notice thereof in the *New Zealand Gazette* and in one or more newspapers and shall give such will to any person legally entitled to demand the same.

Public Trustee to give notice when any private trust accepted.

Or rejected.

16. When any deed or will is rejected by the Public Trustee such rejection shall to all intents and purposes have the effect of a disclaimer

If rejected powers null and void.

by deed by the Public Trustee of the grant devise or power made or given thereby respectively and of the office of Trustee or Agent under the same respectively and of all and singular the trusts powers authorities rights and privileges whatsoever under such deed will or power of attorney as the case may be.

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Testator may deposit will.

17. Any testator may deposit his will in the Public Trust Office for safe custody but it shall not be deemed to be received within the meaning of the fourteenth section of this Act until the death of such testator ; and if any person shall open any such will when sealed up or shall cause or direct the same to be opened before the death of the testator he shall be liable to a penalty of one hundred pounds to be recovered in a summary way.

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Property to be managed by Public Trustee subject to this Act.

18. Every property placed in the Public Trust Office shall be administered by the Public Trustee and the profits and income accruing therefrom shall be paid or invested subject to the provisions of this Act and of any Act hereafter to be passed amending the same and to the Regulations made under the authority thereof and subject to the trusts attached to each such property severally.

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Powers of Public Trustee over private trusts may be revoked as in ordinary cases.

19. The powers of the Public Trustee and of all other persons in respect to any such property shall be liable to be revoked or altered in the same manner and to the same extent only as if an ordinary Trustee or Agent had been originally appointed in lieu of the Public Trustee under this Act.

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Landed property only disposed of by the Board and under Seal.

20. It shall not be lawful for the Public Trustee to enter into any agreement for the disposal of any landed property in the Public Trust Office except by the written approval of the Board and every instrument for the disposal of such property shall be executed by the Public Trustee and sealed with the Seal of the Office in the presence of any two members of the Board who shall witness the same.

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Board to direct how moneys to be invested.

21. The Board may from time to time direct in accordance with the Regulations above mentioned in what securities any part of the moneys in the Public Trustee's Account shall be invested and the Public Trustee shall thereupon make the investment so directed: Provided that no such direction shall apply to money which the Public Trustee is instructed to invest under the provisions of the nineteenth section of this Act.

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Public Trustee not to invest moneys without approval of Board.

22. It shall not be lawful for the Public Trustee except by approval of the Board in writing to invest any moneys of the Public Trustee's Account in any securities or to draw any moneys from such Account for the purpose of such investment nor to sell or otherwise dispose of nor to enter into any agreement for the sale or other disposal any such securities.

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Title-deeds and securities to be kept as the Governor directs.

23. All title-deeds relating to property in the Public Trust Office and all securities in which any part thereof is invested shall be deemed to be in the joint custody of the Colonial Treasurer the Auditor and the Public Trustee and shall be kept by them in such place and manner and subject to such Regulations as the Governor in Council directs for the periodical inspection and safe custody thereof.

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Case may be referred to Supreme Court on petition.

24. Upon petition in that behalf presented to the Supreme Court by any member of the Board or by any person showing to the satisfaction of the Court that he has a direct interest in any property for the time being administered by the Public Trustee the said Court or any Judge thereof shall have power to summon the Public Trustee and require him to answer the allegations of the petition and may thereupon at a hearing to be appointed in that behalf make such order in relation to the conduct of the Public Trustee as trustee in the matter giving rise to such petition as the said Court shall think fit.

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Supreme Court may make final orders thereon.

25. For the purposes of any such petition the said Court or any Judge thereof may also order the Public Trustee to produce or to pay

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and deliver over all money books and documents in his possession control or custody to any person or persons named in any such order.

26. Every petition to the Supreme Court presented under the provisions of this Act shall be presented heard and determined and all proceedings thereunder shall be had and taken in accordance with such rules of practice and procedure as shall be framed in that behalf by the Judges of the Supreme Court pursuant to the powers now held by them.

Judges to make rules

27. The provisions of "The Trustee Relief Act 1862" shall so far as the same are not inconsistent with or repugnant to this Act be deemed to apply to the Public Trustee appointed under the provisions of this Act.

Trustee Relief Act to apply.

28. All moneys being part of or accruing out of property placed in the Office of Public Trust and all moneys received by the Public Trustee or any other person on account of the said Office shall be paid on the same day on which the same is received into such Bank as the Governor in Council 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 Auditor.

Money to be paid to "Public Trustee's Account" in Bank.

29. It shall be the duty of the Bank at the close of business on each day to make up the pass-book of the Public Trustee's Account and to send the same to the Auditor.

Bank to send pass-book to Auditor daily.

30. The Public Trustee shall keep a Cash Account Book in which shall be entered each day all receipts into and payments out of the Public Trustee's Account in the order in which they severally occur and at the close of business on each day the Public Trustee shall sign the said book and send it to the Auditor: And the Auditor shall forthwith compare the said book with the Bank pass-book and if any discrepancy appear which is not explained to his satisfaction he shall forthwith report thereon to the Colonial Treasurer.

Public Trustee to send Cash Book to Auditor daily.

31. Whenever the Public Trustee accepts any deed or will or executes any deed or other agreement whereby any money becomes payable to the Public Trustee's Account in respect of any property placed in the Public Trust Office he shall forthwith send a memorial thereof to the Auditor setting forth the times at which the persons by whom and the several sums in which such moneys become so payable and if the Auditor ascertains that any such moneys are not paid into the Public Trustee's Account when due and the default therein is not explained to his satisfaction he shall forthwith report the same to the Colonial Treasurer.

Public Trustee to give notice to Auditor of agreements by which money is payable to Public Trustee's Account.

32. If at any time it appears to the Colonial Treasurer upon the report of the Auditor that any moneys have been expended by the Public Trustee which he was not authorized so to expend in the proper administration of the properties committed to his trust or if it appears that any moneys payable into the Public Trustee's Account have been received but have not been paid into such Account or if there appears to be any deficiency in the balance in such Account the Colonial Treasurer shall forthwith call on the Public Trustee to make good the deficiency arising in any such manner and if the Public Trustee shall not forthwith pay the same into the Public Trustee's Account the Colonial Treasurer shall immediately recover the same as hereinafter provided: Provided that if the Public Trustee shall prove that the said deficiency occurred through the default of some other officer and without his cognizance or instruction then the Public Trustee shall not be liable but the Colonial Treasurer shall recover the said deficiency from the officer so defaulting: Provided also that no salary or other moneys due to the Public Trustee or to such other officer shall be paid until any such deficiency for which such Trustee or other officer is liable shall have been made good.

Colonial Treasurer to recover deficiency from Public Trustee or other officer.

Money in Public Trustee's Account property of the Crown.

33. All moneys lying in or payable into the Public Trustee's Account shall be deemed to be property of the Crown for the purposes of this Act and shall be recoverable from the person by whom the same are payable by action suit or information in the Supreme Court in like manner as money due to Her Majesty within the Colony.

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Public Trust Office Account.

34. The Public Trustee shall keep a separate account called "The Public Trust Office Account" which he shall charge with all salaries and other expenses incurred in the general management of the Public Trust Office and shall credit with the sums payable out of the several properties in the Public Trust Office for the cost of managing the same and with all fees and other moneys paid into the Public Trustee's Account but not belonging to or forming part of any such property: And he shall keep a separate and detailed account of the receipts and payments made on account of each separate property in the Public Trust Office and of all moneys invested on account of each such property.

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Accounts of each separate property.

35. The Public Trustee shall pay out of the Public Trustee's Account all such salaries and other expenses in the general service of the Public Trust Office as he shall be authorized to pay by the Colonial Treasurer and as shall be by law payable but not otherwise and he shall pay out of the same Account all current expenses and charges incident to the management of the properties in the Public Trust Office and all the net profits and income accruing therefrom to the several persons entitled to receive the same subject to the provisions of this Act and of the Regulations issued under the authority thereof: Provided that he shall not pay or agree to pay on account of any property in the Public Trust Office any sum in excess of the amount which is standing in the Public Trustee's Account to the credit of such property.

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Expenses of office and managing properties and profits to be paid out of Public Trustee's Account.

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Deficiency in Public Trust Office Account to be advanced out of Consolidated Fund.

36. If the balance in the Public Trust Office Account is at any time insufficient to meet the charges thereon the Colonial Treasurer may from time to time advance such sums out of the Consolidated Fund as may be necessary to meet such charges: Provided that the total amount so advanced in any one financial year does not exceed the sum appropriated by Parliament for such purpose and provided also that all moneys so advanced are repaid by the Public Trustee to the Consolidated Fund so soon as the balance in the Public Trust Office Account admits of such repayment and if the balance in the Public Trust Office Account is more than sufficient to meet the charges thereon the Public Trustee shall from time to time at such times as the Colonial Treasurer shall direct pay the excess into the Consolidated Fund and moneys so paid in shall become a part of Her Majesty's Consolidated Revenue.

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Excess to be paid into Consolidated Fund.

37. The Public Trustee shall as soon as possible after the close of each year submit to the Auditor the account for the previous year of each property in the Public Trust Office and after the Auditor has approved the same he shall send such account together with such report thereon as he shall think fit to the person or persons by whom it was placed in the Public Trust Office or to the heirs or assigns of such persons as the case may be.

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Auditor to send Public Trustee's accounts to persons concerned.

38. And for the better security of the moneys in the Public Trustee's Account the Colonial Treasurer shall from time to time determine the amount required to be kept in such Account to meet immediate and necessary payments for the expense of the Public Trust Office and of administering the properties placed therein and the Public Trustee shall day by day pay into the Public Account to the credit of the Public Trust Fund any balance in the Public Trustee's Account in excess of the amount so determined by the Colonial Treasurer and the Auditor shall forthwith report to the Colonial Treasurer if the balance in the Public Trustee's Account at any time exceeds the amount so determined and moneys so paid into the Public Trust Fund shall upon the application of the Public Trustee be issued from time to time in

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Balance in Public Trustee's Account in excess of sum fixed by Colonial Treasurer to be paid to Public Trust Fund.

accordance with the Public Revenues Act and paid into the Public Trustee's Account as the same may be required for the service thereof.

39. The Public Trustee shall within twenty days after the close of each financial year prepare a balance sheet showing the whole receipt and expenditure of the Public Trustee's Account during such year and therein especially the sums paid into drawn out of and remaining due from the Public Trust Fund and also the sums invested in any securities as provided in this Act and further showing under a separate head the receipt and expenditure of the Public Trust Office Account and the advances thereto out of and the repayments into and the balance outstanding due to the Consolidated Fund and further showing the receipt and expenditure on account of each several property placed in the Public Trust Office by Order in Council and further showing the aggregate of the receipt and expenditure on account of all properties placed in the Public Trust Office by deed or will as hereinbefore provided but not showing any particulars in respect to each or any of such last-mentioned properties. And the Public Trustee shall send such balance sheet to the Auditor who shall forthwith transmit the same together with such report thereon as he thinks fit to the Colonial Treasurer by whom it shall forthwith be laid before the General Assembly if in session or if not in session then within ten days after the next meeting thereof.

Yearly balance sheet.

40. The Public Trustee shall not be liable for any loss which may occur to any property in the Public Trust Office through any act lawfully done by the Public Trustee by virtue of the powers vested in him by this Act or by any Order in Council deed will or instructions above mentioned in respect of such property nor shall such Public Trustee incur any liability by reason of any error in judgment committed in the execution of his trust with respect to any such property. But nothing in this Act shall restrict or annul any rights or remedies which any person would otherwise have in law or equity against the Public Trustee or his sureties for the recovery of any loss occurring to any property in the Public Trust Office arising out of the fraud or wilful default or neglect of such Public Trustee in the management or disposal of such property.

Liability of Public Trustee and others.

41. In any case where the Public Trustee acting under or by virtue of this Act shall with intent to defraud convert or appropriate any property vested in him or of which he may have the control or disposition to or for his own use or benefit or for any other purpose other than the purpose for which the same may be vested in him or if such Public Trustee shall misappropriate any sum or sums of money which shall be vested in or deposited with him or which may in any manner come to his hands under this Act then and in any of the said cases the amount of such moneys or the value of any such property shall be made good out of the Public Funds and be paid out of any moneys which shall from time to time be appropriated for that purpose by the General Assembly.

Moneys fraudulently converted may be repaid out of Revenue of the Colony.

42. The Colonial Treasurer and any officer of the Treasury authorized by him shall have full access to all the accounts documents and papers in the Public Trust Office and the Public Trustee shall at all times furnish to the Colonial Treasurer all such information as the latter requires.

Colonial Treasurer to have access to papers in Public Trust Office.

43. The Auditor shall have in respect to the Public Trust Office and to all the officers and servants employed therein all the powers which are vested in him by virtue of the Public Revenues Act in respect to the officers and servants employed in any department of the Government Service.

Auditors same powers as under Public Revenues Act.