

Hon. Mr. Ward.

PUBLIC TRUST OFFICE CONSOLIDATION.

ANALYSIS.

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| <p>Title.
Preamble.
1. Short Title.
2. Interpretation.</p> <p>CONSTITUTION OF THE PUBLIC TRUSTEE, THE PUBLIC TRUST OFFICE, AND THE BOARD.</p> <p>3. Public Trust Office.
4. Public Trustee a corporation sole. Common seal.
5. Governor may remove or suspend Public Trustee.
6. Governor may appoint Deputy.
7. Colonial Treasurer may appoint and remove officers.
8. Salaries to be fixed by General Assembly.
9. Board.
10. Public Trustee subject to directions of Board.
11. Contracts.</p> <p>HOW ESTATES MAY BE PLACED IN THE PUBLIC TRUST OFFICE.</p> <p>12. Rights and duties to which Public Trustee may be appointed.
13. Appointment of Public Trustee by trustees, executors, and administrators.
14. Public Trustee entitled, on application, to administration of an intestate estate.
15. Public Trustee may in certain cases, on electing so to do, administer any intestate estate the value of which does not exceed £250 without grant of administration.
16. Public Trustee may exercise certain powers pending grant of probate or administration to person entitled.
17. Notice to person entitled to obtain probate or letters of administration.
18. Public Trustee may administer 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 colony when grant made to Public Trustee.
19. Validation of acts done by Public Trustee acting under probate or administration granted in error.
20. Public Trustee to hold shares of infants during infancy.</p> <p>SPECIAL POWERS OF THE PUBLIC TRUSTEE.</p> <p>21. Maintenance and advancement of widow and infants out of trust estate.
22. Net residue not exceeding £50 may be paid to widow.</p> | <p>23. Shares of infants may be paid for their maintenance, &c.
24. Where next-of-kin cannot be found, Trustee may pay residue of estate to widow.
25. Public Trustee may apply income, or not exceeding one-half of capital, for maintenance, &c., of infant.
26. Court's authority not restricted from making order for maintenance, &c.
27. General powers of the Public Trustee.</p> <p>PROCEDURE.</p> <p>28. Public Trustee may submit question of law to Judge of the Supreme Court.</p> <p>INVESTMENTS.</p> <p>29. Common fund.
30. Special investments not guaranteed.
31. Investment of funds.
32. Any deficiency to be made good out of Consolidated Fund.</p> <p>ACCOUNTS.</p> <p>33. Public Trust Office funds to be Crown property.
34. Public Trustee may advance for administration purposes to amount not exceeding value of property.
35. Advances to estates for administration expenses.
36. Balance-sheet.
37. Deficiency payable out of Consolidated Fund.
38. Payment of salaries and expenses.
39. Colonial Treasurer to have access to accounts &c. Powers of Auditor-General.
40. Payments to Public Trustee's Account.</p> <p>SHARES IN COMPANIES.</p> <p>41. Shares in companies.</p> <p>MISCELLANEOUS.</p> <p>42. Public Trustee not required to give bond.
43. Deposit of wills.
44. Acceptance or rejection by Board of appointment of Public Trustee to be notified to interested persons.
45. Public Trustee may make payments of sums of less than £50 without order.
46. Payment of claims when assets insufficient.
47. Provision for closing administration of estate after notice.
48. A certificate under the hand and seal of the Public Trustee to be accepted by all Courts, &c., as sufficient proof of death, and that the Public Trustee is administering.</p> |
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No. 75—3.

NOTE.—Amendments made by the Joint Statutes Revision Committee are noted S.R. in the margin, and underlined where necessary for identification.

<p>49. Consular officers in colony to receive residue for residents in foreign countries.</p> <p>50. Any person obtaining order placing property in Public Trust Office to serve same on Public Trustee under certain penalty.</p> <p>51. Court and Registrars to see that orders with particulars of property sent to Public Trustee.</p> <p>52. Existence of any property in the hands of any person or corporation belonging to a deceased person whose estate is being administered by Public Trustee to be disclosed to the Public Trustee.</p> <p style="text-align: center;">ACTIONS AGAINST THE PUBLIC TRUSTEE.</p> <p>53. Public Trustee and officers not to be personally liable except in case of fraud or crime.</p> <p>54. Persons entitled to same remedy against Public Trustee in corporate capacity as if he were a private person.</p>	<p style="text-align: center;">REGULATIONS.</p> <p>55. Regulations.</p> <p>56. Reservation of existing powers except as otherwise provided.</p> <p style="text-align: center;">REPEALS.</p> <p>57. Repeals.</p> <p>58. Appointments under repealed Acts to be subject to this Act.</p> <p>59. Powers, &c., vested in Board, Public Trustee, and officers under repealed Acts to vest under this Act.</p> <p>60. Property, &c., vested in Public Trustee before this Act to continue so vested subject hereto.</p> <p>61. Operation of "The Interpretation Act, 1888," as to repealed Acts.</p> <p>62. Certain statutes to be read subject to provisions of this Act.</p> <p>63. Saving of section 18 of "The Public Trust Office Acts Amendment Act, 1893."</p> <p>64. Validation of Order in Council.</p>
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A BILL INTITULED

Title.	AN Act to consolidate the Law relating to the Public Trustee and to the Public Trust Office.	
Preamble.	WHEREAS it is expedient to consolidate the law relating to the Public Trustee and to the Public Trust Office:	5
	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 Consolidation Act, 1894."	10
Interpretation.	2. In this Act, if not inconsistent with the context, the expression,—	
	"Board" means the Board constituted by this Act:	
	"Court" or "Judge" includes any Court or Judge having jurisdiction:	15
	"Estate" or "estates" means any property under administration, or held by the Public Trustee under this Act, either as trustee, executor, administrator, liquidator, receiver, guardian, committee, agent, or attorney, or in any other capacity:	20
	"Instrument" includes Act of the General Assembly:	
	"Land" or "real estate" includes lands, tenements, and hereditaments whether corporeal or incorporeal, and any share, estate, or interest in them, and any possibility, right, or title of entry or action, and whether the same shall be in possession, reversion, remainder, or contingency:	25
	"Person of unsound mind" means a person who is not an infant , a lunatic or idiot, but who is incapable of managing his affairs whether by reason of infirmity of mind, age, or any other cause:	30
	"Property" includes both real and personal property:	
	"The Public Trustee" means the Public Trustee as constituted by this Act <i>or by</i> and includes the Public Trustee as constituted by the Deputy Public Trustee under the Acts hereby repealed:	SR 35
S. R.	"Trust" does not include the duties incident to an estate mortgaged, but, with this exception, "trust" and	

5 “trustee” include implied and constructive trusts, and include cases where the trustee has some beneficial estate or interest in the subject of the trust; and include also the Crown or the Governor, or any public officer, or an executor or administrator, and the duties incident to the office of personal representative of a deceased person.

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

CONSTITUTION OF THE PUBLIC TRUSTEE, THE PUBLIC TRUST OFFICE, AND THE BOARD.

20 3. There shall be an office called “the Public Trust Office,” administered by an officer called “the Public Trustee,” who shall be appointed by the Governor in Council, and shall hold office during the pleasure of the Governor in Council, and on the same terms and conditions as officers in the ordinary Civil Service of the colony. Public Trust Office.

25 4. The Public Trustee is hereby constituted a corporation sole, with perpetual succession and a seal of office. The appointment of the Public Trustee *and of the Deputy Public Trustee*, and the seal of the Public Trustee, and the signature of the person for the time being holding the office of Public Trustee *or of Deputy Public Trustee*, shall be judicially taken notice of without further proof. Public Trustee a corporation sole.
Common seal.

30 5. The Governor in Council may from time to time remove or suspend the Public Trustee *or the Deputy Public Trustee*, and, in the case of the death, resignation, or removal of the Public Trustee *or the Deputy Public Trustee*, appoint some other fit and proper person in his stead. Governor may remove or suspend Public Trustee.
S. R.

35 6. The Governor in Council may appoint some person to act as the Deputy of the Public Trustee in case of the illness, death, removal; suspension, resignation, or absence from duty of the person for the time being holding the office of Public Trustee; and such Deputy shall, during the time he shall act as such Deputy, have all the powers and perform all the duties of the Public Trustee, and shall receive such remuneration as the Governor in Council shall determine, not exceeding the amount of salary which the Public Trustee is entitled by law to receive; and no person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising such Deputy Public Trustee to act as such Deputy, or as to the necessity or propriety of such appointment; and all acts or things done or omitted by such Deputy Public Trustee shall be as valid and effectual as if the same had been done or omitted by the Public Trustee. Governor may appoint Deputy.

50 7. The Colonial Treasurer may from time to time appoint, suspend, and remove such officers and servants other than the Public Trustee or the Deputy Public Trustee as may be necessary for the purposes of this Act, who shall hold their several offices on the same terms as Civil servants. Colonial Treasurer may appoint and remove officers.

Salaries to be fixed
by General
Assembly.

Board.

8. The salaries of the Public Trustee, the Deputy Public Trustee, and of other officers and servants in the Public Trust Office, shall be such as shall be fixed by the General Assembly.

9. There shall be a Board styled "The Public Trust Office Board," consisting of the Colonial Treasurer, the Native Minister, the Solicitor-General, the Government Insurance Commissioner, the Commissioner of Taxes, the Surveyor-General, and the Public Trustee. The Board shall sit in the City of Wellington at such times and places as it thinks fit. Three of the members shall form a quorum. At all meetings of the Board the Colonial Treasurer, if present, shall be the Chairman, and in his absence such member of the Board as the majority of the members present shall choose shall preside; and such Chairman or presiding member shall have a deliberative vote, and, in all cases of equality of votes, shall also have a casting vote.

S. R. The Board *Governor in Council* may from time to time make, alter, and revoke by-laws for regulating the general conduct of business and proceedings of the Board. Before the Public Trustee shall be appointed, or accept any appointment, as trustee, executor, administrator, liquidator, receiver, guardian, committee, agent, or attorney, or any other appointment under this Act, the question of such appointment shall be submitted to the Board, and unless the Board consents thereto no appointment shall be made or accepted: Provided that this requirement shall not apply to an intestacy, except where the Board specially directs the Public Trustee not to accept administration of any intestate estate. Under no circumstances shall the Public Trustee accept any appointment jointly with any other person.

S. R. ~~The Governor in Council may from time to time provide that any of the appointments hereinbefore authorised may be accepted by the Public Trustee without the consent of the Board.~~

S. R. The respective appointments of the members constituting the Board, and their signatures, shall be judicially taken notice of without further proof. All ~~by-laws~~, minutes or resolutions of the Board or copy thereof, if purporting to be signed by the Chairman or presiding member, shall be *prima facie* evidence of such ~~by-laws~~, minutes or resolutions, and that the same were duly and properly made, and that the person signing the same is such Chairman or presiding member.

Struck out.

S. R. Where the Public Trustee is appointed or authorised to act as trustee, executor, administrator, liquidator, receiver, guardian, or committee, he shall not be removed from any of those appointments by any Court or person unless the Board consents thereto.

New.

S. R. Where before the twenty-fourth day of September, one thousand eight hundred and ninety-one, the Public Trustee was appointed or authorised to act as trustee, executor, administrator, guardian, or committee he may be removed from any such appointment by the Supreme Court, if it be made to appear to the satisfaction of a Judge thereof on petition that the removal of the trust from the Public Trust Office would be beneficial to the persons interested under the particular trust.

10. The Public Trustee shall be subject to any directions which may from time to time be made by the Board; ~~but the Governor in Council may from time to time direct and authorise the Public Trustee to exercise any powers and perform any duties vested in or performable by him without reference to the Board; and~~ *but* under no circumstances shall it be obligatory on any person dealing with the Public Trustee to see or inquire whether any act or thing done or omitted was so done or omitted with the sanction of the Board; and persons so dealing shall be entitled to assume that the act or thing so done or omitted was done or omitted with the sanction of the Board.

Public Trustee subject to directions of Board.

S. R.

11. When the Public Trustee is authorised to enter into any contract or exercise any power such authority may be exercised as follows:—

Contracts.

15 Any contract which if made between private persons, or any power which if exercised by private persons,—
 Firstly, must be in writing under seal;
 Secondly, must be in writing, signed by the parties thereto or the persons executing the power;
 20 Thirdly, may be made or exercised verbally, without writing;
 When entered into or exercised by the Public Trustee,—
 In the first case shall be in writing under the seal of the Public Trustee, and signed by the Public Trustee;
 In the second case shall be in writing, signed by the Public Trustee;
 25 In the third case may be made or exercised verbally, without writing, by the Public Trustee, or by any person by his direction or on his behalf.

HOW ESTATES MAY BE PLACED IN THE PUBLIC TRUST OFFICE.

30 12. Where the Crown, the Governor in Council, or the Governor, or a public officer, or a Court, Judge, public or private corporate body, or any person now or hereafter can appoint a trustee, executor, administrator, ~~liquidator, receiver,~~ guardian, committee, agent, or attorney, any of such appointments may be made of the Public Trustee if he consents thereto. The duties and rights of the Public Trustee under
 35 any appointment shall be the same, subject to the express provisions of this Act, as if the appointment had been made of a private person.

Rights and duties to which Public Trustee may be appointed.

S. R.

Struck out.

40 13. Trustees, whether appointed before or after the coming into operation of this Act, may, unless expressly prohibited, and notwithstanding the terms of the trust *as to the number of trustees*, appoint the Public Trustee sole trustee in their place;
 Executors, whether appointed before or after the coming into operation of this Act, may, unless expressly prohibited, ~~and notwithstanding the terms of the will,~~ before or after taking out probate, appoint the Public Trustee sole executor;
 45 Administrators, with or without a will annexed, whether appointed before or after the coming into operation of this Act, may appoint,

S. R.

unless expressly prohibited, and notwithstanding the terms of a will the Public Trustee sole administrator;

If there be more than two trustees, executors, or administrators the majority may make such appointment;

Where there are more trustees, executors, or administrators than one, any one trustee or executor (whether before or after proving a will), or any one administrator, may apply by petition, or in such other manner as by rules made under section *twenty-eight* of this Act may be provided, to the Supreme Court or a Judge thereof to have the Public Trustee appointed sole trustee, executor, or administrator, and the Court or Judge may, and is hereby given jurisdiction to, make such order as it or he thinks fit. Where to the appointment of a trustee, executor, or administrator the consent of any person is requisite, and such person refuses to consent to the Public Trustee being appointed, or where the person to consent is an infant, idiot, or lunatic, or a person of unsound mind, or is under any other disability, then an appointment of the Public Trustee may be made without such consent, if a Judge of the Supreme Court consents thereto.

S. R.

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

Upon any appointment of the Public Trustee under sections *twelve* and *thirteen* of this Act then by virtue of the appointment all property, rights, powers, and functions shall, without any conveyance or assignment, become thereby vested in the Public Trustee.

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

New clause.

13. With the consent of the Supreme Court or a Judge thereof—

Trustees, whether appointed before or after the coming into operation of this Act, may, unless expressly prohibited, and notwithstanding the terms of the trust as to the number of trustees, appoint the Public Trustee sole trustee in their place;

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

Administrators, with or without a will annexed, whether appointed before or after the coming into operation of this

S. R.

Appointment of Public Trustee by trustees, executors, and administrators.

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Act, may, unless expressly prohibited, appoint the Public Trustee sole administrator;

Where there are more trustees, executors, or administrators than one, any one trustee or executor (whether before or after proving a will), or any one administrator, may apply to the Supreme Court or a Judge thereof to have the Public Trustee appointed sole trustee, executor, or administrator. All applications to the Supreme Court or a Judge thereof under this section may be by petition, or in such other manner as by rules made under section *twenty-eight* of this Act may be provided; and the Court or Judge may, and is hereby given jurisdiction to, make such order as it or he thinks fit.

S. R.

Where to the appointment of a trustee, executor, or administrator the consent of any person is requisite, and such person refuses to consent to the Public Trustee being appointed, or where the person to consent is an infant, idiot, or lunatic, or a person of unsound mind, or is absent from the colony, or is under any other disability, then an appointment of the Public Trustee may be made without such consent, if a Judge of the Supreme Court consents thereto.

Transposed.

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

Upon any appointment of the Public Trustee under sections *twelve* and *thirteen* of this Act then by virtue of the appointment all property, rights, powers, and functions shall, without any conveyance or assignment, become thereby vested in the Public Trustee.

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

14. The Public Trustee, upon the death of any person *domiciled in New Zealand, or who has property in New Zealand*, who has died or shall hereafter die within New Zealand or elsewhere intestate, shall, if he thinks fit to apply therefor, be entitled to administration.

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

S. R.

The application may be made in any judicial district of the Court at the discretion of the Public Trustee.

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

The Public Trustee shall be entitled as of right to such administration: Provided that if some other person within the colony who, if it were not for this section would be entitled to such administration, ~~proves that it would be more beneficial to the ad-~~

S. R.

~~administration of such intestate estate if such person were appointed administrator, applies for such administration, then the Court or Judge may grant administration to such person: Provided that it shall not be necessary for the Public Trustee nor shall the Court or Judge require him to give notice of such application to any such person.~~ 5

Public Trustee may in certain cases, on electing so to do, administer any intestate estate the value of which does not exceed £250 without grant of administration.

15. Where, before or after this Act, any person has died or shall die intestate, in or out of the colony, leaving property the gross value of which as estimated by the Public Trustee does not at the time of the election hereinafter mentioned exceed two hundred and fifty pounds, and no person has taken out administration, the Public Trustee may, in all cases where he is entitled to take out administration, in lieu of taking out letters of administration or obtaining an order to administer, file in the Wellington District of the Supreme Court an election in writing setting forth the name, residence, and occupation, so far as then known to the Public Trustee, of the intestate, and of the property of the intestate as then known, and electing to administer. Upon such election being filed the Public Trustee shall be deemed to be administrator of the whole property of the deceased person in all respects as if letters of administration had been regularly granted to the Public Trustee. The Public Trustee shall publish in the *Gazette* a notice that he has made such election. The *Gazette* notice shall be conclusive evidence that the Public Trustee is rightfully entitled to administer under this section. 10 15 20

If after filing such election the gross value of the property to be administered shall be found to exceed the sum of four hundred pounds, the Public Trustee shall, as soon as practicable thereafter, file in the said judicial district of the Supreme Court a memorandum under his hand stating the fact, and proceed in the ordinary manner to obtain an order for the administration of the estate. 25 30

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

16. When any person dies or has heretofore died, whether testate or intestate, and notwithstanding that some person other than the Public Trustee is appointed executor, or is entitled to letters of administration, the Public Trustee may, if he thinks fit, until probate or letters of administration are granted, exercise with respect to the estate of the deceased person all such powers and authorities and do all acts and things as he would have or could exercise or do if he had obtained probate of the will or letters of administration of the estate of the deceased person, *the deceased had died intestate and the Public Trustee had obtained administration*, save as follows: 35 40

The Public Trustee shall not sell, lease, exchange, mortgage, or partition any portion of the property (except by sale of such portion of the personal estate as may be of a perishable nature,) unless such property is ordered to be sold by a Judge of the Supreme Court upon the application of the Public Trustee, and which order a Judge of the Supreme Court is hereby authorised to make. 45

All costs, charges, and expenses incurred by the Public Trustee shall be a first charge upon the property of the deceased person.

Any person who afterwards takes out probate or letters of administration of the estate of any such deceased person shall, before he shall be entitled to a grant thereof, first pay any costs, charges, 50

commissions, and expenses which may have been incurred by or become payable to the Public Trustee.

17. Before the Public Trustee first acts under section *sixteen* he shall give notice, in writing or by telegram, to any person in the colony if known to the Public Trustee as a person who (not being an infant, lunatic, idiot, or of unsound mind) would be entitled to obtain probate or letters of administration, informing such person that he intends to so act unless such person forthwith proceeds to apply for probate or letters of administration; and if such person does not, within a period of twenty-one days after the posting of such notice or the despatching of such telegram, give notice, in writing or by telegram to the Public Trustee in the City of Wellington, that he intends to apply for probate or letters of administration, or if such person gives such notice but fails for fourteen days thereafter to apply therefor, or makes such application and it fails, then, unless the Court or a Judge shall otherwise order, the Public Trustee may proceed to exercise any of the powers and authorities given by section *sixteen* of this Act.

Notice to person entitled to obtain probate or letters of administration.

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

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

18. When any person dies testate, and application for probate or letters of administration is not made within three months after the death of such person, the Public Trustee may apply for letters of administration, and the Court or a Judge shall make such grant unless the person entitled to probate or letters of administration shall apply therefor, or show to the satisfaction of the Court or Judge that the delay in making such application has been and still is unavoidable or accidental. Upon such an application no costs shall be awarded against the Public Trustee.

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

The Court or a Judge may, upon the application of any person entitled to probate or letters of administration with the will annexed (or of his attorney) who was out of the colony when the grant to the Public Trustee was made, and who has not renounced or refused probate or administration, grant probate or administration to such person in such manner and subject to any limitations or conditions the Court or a Judge thinks proper.

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

No such application shall be made until after fourteen days' notice in writing of the intention to apply shall have been left at the office of the Public Trustee in the City of Wellington.

Immediately on the grant of such probate or administration, all the powers, rights, and duties of the Public Trustee (except the rights reserved hereby) in relation to the testator's estate, and all liability of the Public Trustee under any contract entered into by the Public Trustee, or otherwise, affecting or relating to such estate shall cease; and, subject to and on the allowance and payment of

all moneys due for commission, necessary outlay, disbursements, costs, charges, and expenses affecting such estate, including the costs of and incidental to the application for probate and administration, and consequent thereon, and, subject also to the provisions of this section, such portion of the estate of the testator as is then unadministered by the Public Trustee shall vest in the person obtaining probate or administration. 5

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

19. Without prejudice to any protection otherwise afforded, where, under the *bonâ fide* belief (and the absence of such *bonâ fide* belief shall be upon any person who controverts it) that a person has died testate or intestate, the Public Trustee has heretofore taken out probate or administration, or is administering under statutory powers an estate, or is appointed or acting as trustee under a will, or shall hereafter take out probate or administration, or administer under statutory powers, or be appointed or act as trustee under a will, and afterwards it is found that such person is living, or that such person did not die intestate, or that a will exists which revokes or alters the will which the Public Trustee has proved, or under which he becomes administrator, or under which he is administering or is acting as trustee, then, notwithstanding that such person is living, or that the deceased did not die intestate, or made a will revoking or altering the provisions of the will of which the Public Trustee has taken out probate or administration, or under which he is appointed or is acting as trustee, all acts and things heretofore 10 15 20

or hereafter done or omitted by the Public Trustee shall be as good, valid, and effectual as if he had been lawfully appointed or entitled to act as such executor, administrator, or trustee.

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

Public Trustee to hold shares of infants during infancy.

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SPECIAL POWERS OF THE PUBLIC TRUSTEE.

21. Where the net residue of the estate of a person deceased intestate, which now is or hereafter shall be under administration by the Public Trustee, does not exceed two hundred pounds in value, then the Public Trustee may apply the same towards the maintenance, education, and advancement of any widow or infants in such manner as he thinks fit, or may pay the same for such purposes to such widow or infants, or to any person on her or their behalf, to be so applied, without seeing to the application thereof or being responsible for such application, or for the misapplication or non-application thereof.

Maintenance and advancement of widow and infants out of trust estate.

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22. Where the net residue of an intestate estate heretofore or hereafter under administration by the Public Trustee does not exceed fifty pounds, and there is a widow, the Public Trustee, if he thinks fit, may pay the whole of such residue to the widow.

Net residue not exceeding £50 may be paid to widow.

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23. When the net residue of any intestate estate heretofore or hereafter under administration by the Public Trustee exceeds fifty pounds, and there are infants entitled, the following provisions shall apply:—

Shares of infants may be paid for their maintenance, &c.

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(1.) If the share of such infant does not exceed fifty pounds, then with respect to such infant the Public Trustee may from time to time pay such share to the widow of the intestate, or to such person as the Public Trustee thinks fit, to be applied by such widow or person for the maintenance, education, and advancement of such infant, or may himself so apply such share.

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(2.) If the share of such infant exceeds fifty pounds, then the Public Trustee may, with respect to such infant, upon an order of a Judge of the Supreme Court, to be applied for by the Public Trustee (and which order such Judge is hereby authorised to grant), pay so much of such share as such Judge shall from time to time authorise to be paid either to the widow or to any other person as the Public Trustee may think proper, to be applied for the maintenance, education, or advancement of such infant, or may himself so apply the same.

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24. Where any person entitled to the net residue or any part of the net residue of the property of an intestate under administration by the Public Trustee, whether dying before or after this Act comes into operation, shall not have established within three years next after his the death of the intestate his claim thereto, and where the Public Trustee does not know of any next-of-kin, and cannot by reasonable efforts ascertain that such exist, and the intestate shall have left a

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

S. R.

widow who shall be then living, the Public Trustee may at the expiration of such period pay or transfer to the widow such net residue :

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

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

25. (a.) The Public Trustee, where he now is or hereafter shall be a trustee, or acting as trustee, or as executor or administrator, may, if he thinks fit, apply for the maintenance, education, or otherwise for the benefit of any *an* infant, during his or her minority, the whole or any part of the income of the share to which such infant is entitled in possession ; and the Public Trustee may, if he thinks fit, apply for the advancement or otherwise for the benefit of an infant ~~any part or parts not exceeding in the whole one-half of any part or parts not exceeding in the whole one-half of the corpus or capital of the share to which any infant is entitled in possession or reversion immediately expectant on a prior life-interest ; but no such application of a reversionary share shall be made without the previous consent in writing of the person on whose death such prior interest shall be determinable : If the total corpus or capital, to a share or interest in which such infant is entitled, does not exceed two hundred pounds in value, then the Public Trustee may apply the whole of such share for such purposes :~~

S. R.

S. R.

Provided always that in any case the Public Trustee may for such purposes apply the corpus of the share of any infant to the extent of five hundred pounds :

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

Provided that nothing herein contained shall apply to a case where provisions are expressly made for the maintenance, education, advancement, or otherwise for the benefit of an infant, or whereby provisions are expressly made against any such application : Provided, further, that where provision is made, but it shall be or become insufficient, of which insufficiency the Public Trustee shall be the sole judge, then the provisions of this subsection shall apply.

New paragraphs.

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

The Public Trustee shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time on securities on which he is by this Act or by an instrument authorised to invest trust moneys, and shall hold those accumulations for the benefit of the persons who ultimately become entitled to the property from which the same arise ; but so that the Public Trustee may

at any time, if he thinks fit, apply those accumulations or any part thereof as if the same were income arising in the then current year.

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

This subsection applies whether the instrument comes into operation before or after the commencement of this Act.

(c.) In addition to and not as restricting any of the powers conferred by subsections (a) and (b), with the consent of the persons having prior estates or interests in property, whether corpus, capital, or income, held under an instrument, whether the income is directed to be accumulated or not, if such corpus, capital, or income is made payable to a class of persons, and the members of that class, or some of them, would ultimately, upon attaining a specified age, or upon the happening of an event, be entitled to a share of such corpus, capital, or income, and by survivorship or otherwise may become entitled to the shares of the other members of the class, the contingencies being equal, the Supreme Court, or a Judge thereof, may authorise the application of (or the Public Trustee may without such authority apply) the presumptive or contingent shares of infants belonging to the class towards their maintenance, education, or advancement, notwithstanding that there may be future members of the class who may come into existence: Provided that where any member of the class shall have attained the required age, or become entitled by age or otherwise, then the consent of such persons shall be necessary to such application.

Applications under this subsection to the Court or a Judge may be made by any trustee (including the Public Trustee, but without restricting his powers), or by an infant by petition, or by such other proceeding as rules made under section *twenty-eight* of this Act may provide.

(d.) In construing and giving effect to the respective provisions of subsections (a), (b), and (c) of this section, the one shall be taken in aid of the other, and so that each of the provisions can be exercised independently the one of the other.

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

26. Nothing contained in section *twenty-five* shall restrict any Court having jurisdiction from making any order for the application of either corpus, capital, or income, for the maintenance, education, advancement, or otherwise for the benefit of an infant.

27. Where the Public Trustee is at the time this Act comes into operation, or shall hereafter become appointed trustee, executor, administrator, guardian, receiver, liquidator, or committee, or is otherwise authorised to act under this Act, then, unless expressly prohibited by this Act or by or under an instrument, the Public Trustee may at his discretion, but without restricting any other powers, exercise the following powers:—

(1.) Sell property by public auction or private contract altogether or in parts, and subject to such conditions as the Public Trustee thinks fit;

(2.) Lease or concur in leasing property for any term not exceeding *twenty-one* years, to take effect in possession at a reasonable yearly rent, without taking any fine, premium, or foregift;

S. R.

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

General powers of the Public Trustee.

S. R.

- (3.) Dispose of property by way of exchange for other property of a like nature and tenure, situate within the colony, or, where such property consists of an undivided share, concur in the partition of such property, and give or take any property by way of equality of exchange or partition ; 5
- (4.) Purchase in fee-simple lands in the colony ;
- (5.) Repair and insure against fire or accident any property ;
- (6.) Pay rates, taxes, assessments, insurance premiums, and other outgoings ; 10
- (7.) 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 between the Public Trustee and the mortgagee : The power to give such security as aforesaid shall extend to any debt or liability incurred prior to the Public Trustee's appointment, and the Public Trustee may pay the interest secured by such mortgage or charge out of the income, or, if such income be insufficient, out of capital ; 20
- (8.) Exercise powers of appointment, and give consents, as fully as the person whom he represents could have exercised or given ;
- (9.) Grant powers of attorney to any person, in or out of the colony, to do any act or thing which the Public Trustee, if personally present, could do ; 25
- (10.) Bring or defend any action, suit, or other proceeding, and suffer judgment to go by default, or consent to any decree or order in such action, suit, or proceeding, upon such terms as the Public Trustee thinks fit ; 30
- (11.) Take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company, and vote and act either personally or by proxy at meetings of creditors or shareholders, whether the company be in liquidation or not ; 35
- (12.) Take criminal proceedings touching or concerning property, and for the purposes of such proceedings the property shall, unless the contrary be proved, be deemed to be the property of the Public Trustee, and in the possession of the Public Trustee ; 40
- (13.) Apply moneys arising from property, and whether income or capital, in or towards the maintenance, education, or advancement of any person ;
- (14.) Pay debts, obligations, costs, and expenses ; 45
- (15.) Carry out contracts entered into before his appointment to the offices aforesaid ;
- (16.) Do or omit all acts and things, and execute all instruments necessary to carry into effect the powers and authorities hereby given : 50

Provided that the Public Trustee shall not exercise the powers and authorities conferred by subsections *one, two, three, four* and *seven* hereof (unless under this Act or by or under an instrument he is expressly authorised to exercise such powers), without an order of

a Judge of the Supreme Court, and which order such Judge is hereby authorised to make upon the application of the Public Trustee. The order may be general, or apply only to a special case, as the Judge thinks proper.

5

PROCEDURE.

28. In increase of the powers conferred on trustees by sections seventy-six and seventy-seven of "The Trustee Act, 1883," or by any other Act or otherwise, the Public Trustee shall be entitled, without instituting an action, when any question of law arises under this Act or his administration thereunder, to submit to a Judge of the Supreme Court a statement in writing setting forth the facts in respect of which such question of law arises, and requiring the Judge's opinion upon the facts so stated. The Judge shall decide upon the facts so stated.

Public Trustee may submit question of law to Judge of the Supreme Court.

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

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

25 The Court or Judge may, on such application or special case, require notice thereof to be served upon such person as the such Court or Judge thinks proper.

Struck out.

30 It shall not be obligatory on the Public Trustee to tax bills of costs between himself and any solicitor whom he may employ if he is satisfied by the certificate of the solicitor employed permanently in the Public Trust Office, or of any other solicitor (other than the solicitor whose costs are under consideration) to whom he may submit any bill of costs, that such costs are proper and reasonable; and such certificate shall have the same force and effect as if such costs had been taxed in the ordinary process.

S. R.

35 Any two of the Judges of the Supreme Court, of whom the Chief Justice shall be one, may make general or special rules for the purpose of regulating any proceedings in the Supreme Court or any other Court under this Act.

40

INVESTMENTS.

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

Common fund.

50 The interest payable to the respective estates, the moneys of which shall form such common fund, shall be at a rate to be from time to time determined by the Governor in Council, and such rate of interest shall be credited to the respective estates quarterly, namely, on the first day of January, on the first day of April, on the first day

of July, and on the first day of October in each year: On the moneys arising from one estate no rate shall be allowed higher than five pounds per centum per annum on an amount not exceeding three thousand pounds, and on any amount exceeding three thousand pounds not higher than five pounds per centum per annum on the first three thousand pounds, or higher than four pounds per centum per annum on the excess: 5

Provided always that the Governor in Council may, subject to the limitations aforesaid as to the rate of interest, make regulations as to the payment or non-payment of interest upon moneys belonging to any estate, and as to the period from which interest, if allowed, is to be computed, as he thinks proper. 10

Special investments
not guaranteed.

30. Moneys heretofore or hereafter expressly directed to be invested otherwise than as mentioned in subsections *one, two, three, and four* of section *thirty-one* of this Act shall not form part of the common fund, and the Public Trustee may invest such moneys in accordance with such direction; but such investments shall not be entitled to the protection afforded by this Act; and any loss or deficiency in respect of any such investments, or of the money received therefrom, or realised thereby, shall be borne by the estate to which such moneys belong, or if received and realised would belong. 15 20

Investment of funds.

31. Unless expressly prohibited, the Public Trustee may invest all capital moneys heretofore or hereafter arising,—

(1.) In the Government securities of the United Kingdom, or of any colony or dependency thereof, issued under the authority of the Parliament or other legislative authority of the said kingdom, colony, or dependency respectively, and secured upon the public revenues thereof; 25

(2.) In debentures issued by any local authority under any law now or hereafter in force, secured upon general or special rates, or upon real estate held in fee-simple free from encumbrances, or upon the rents and profits of real estate held in fee-simple free from encumbrances: Provided that no greater advance shall be made where the debentures are secured upon real estate than one-half of the value of such real estate; and if the debentures are secured upon rents and profits, then no advance shall be made unless such rents and profits are sufficient to pay double the annual interest payable in respect of the advance. 30 35 40

“Local authority” means for the purposes of this subsection the Council, Board, or other authority of a city, borough, county, town district, road district, drainage district, harbour district, or river district now or hereafter constituted under an Act of the General Assembly: 45

(3.) In advances by way of mortgage on the security of any real estate held in fee-simple within the colony and free from all encumbrances, to an amount not exceeding one-half of the estimated value of such estate, according to a valuation approved by the Board; 50

5 (4.) In fixed deposits in any bank of issue created or established by or under any Act of the General Assembly, or by Royal Charter, *and carrying on business in the colony*, or in the Post-Office Savings-Bank or other savings-bank established in New Zealand in accordance with any law affecting such banks.

32. If the common fund shall be insufficient to meet the lawful claims thereon, the Colonial Treasurer shall pay such sums out of the Consolidated Fund as may be necessary to meet the deficiency.

Any deficiency to be made good out of Consolidated Fund.

10 No deficiency arising from investments upon mortgages of real estate in the colony made prior to the coming into operation of "The Public Trust Office Acts Amendment Act, 1891," shall be made good as provided by this section, except as follows:—

15 The Public Trustee may with respect to the whole or any part of such investments, as he thinks fit, make a charge ~~not exceeding~~ of ten shillings per centum per annum on the moneys invested, to be paid out of the interest arising therefrom; and thereupon any deficiency thereafter arising from any investment in respect of which such charge is made shall be made good as provided by this section.

20 This section shall be deemed to have been in operation as from the coming into operation of "The Public Trust Office Acts Amendment Act, 1891."

ACCOUNTS.

25 33. Moneys in or payable into the Public Trustee's Account by the Public Trustee, the Deputy Public Trustee, or any officer, servant, or person acting or presuming to act under the authority of this Act, shall be deemed to be property of ~~the Crown~~ *Her Majesty* for the purposes of this Act, and shall be recoverable in like manner as money due to the Crown is recoverable.

Public Trust Office funds to be Crown property.

S. R.

30 34. The Public Trustee, in any case where there is to the credit of an estate in the Public Trust Office any real or personal property, whether corpus, capital, or income, but there is no money or not sufficient available to make payments required to be made on account of such estate, whether to the persons entitled thereto or to a share
35 or interest therein or otherwise, may, out of the Public Trustee's Account, advance and pay for or on account of such estate any sum of money which he is authorised or required to pay: Provided that no greater amount shall be so advanced and paid than the value of the real and personal property. With respect to the
40 sums so advanced, they shall be a first charge upon real and personal property in the estate, and shall bear interest at the rate of not exceeding six pounds per centum per annum.

Public Trustee may advance for administration purposes to amount not exceeding value of property.

45 35. The Public Trustee may make advances out of moneys standing to the credit of the Public Trustee's Account for the payment of expenses necessarily incurred by him in the administration of the estate of any deceased person, and, until such advances have been repaid out of such estate, the Public Trustee may charge such estate with interest on the sums so advanced at a rate not exceeding six per centum.

Advances to estates for administration expenses.

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

Balance-sheet.

36. The Public Trustee shall, within thirty days after the close of each year ending on the thirty-first day of March, prepare a balance-sheet setting forth,—

- (1.) The total receipts and expenditure of or in the Public Trustee's Account during such year, and the property and investments held and made during that period; 5
- (2.) A Profit and Loss Account setting forth the total revenue and expenditure of the Public Trust Office, including advances from Consolidated Fund, and losses chargeable to such revenue. 10

And the Public Trustee shall send such balance-sheet to the Auditor-General, who shall forthwith transmit the same, together with such report thereon as he thinks fit, to the 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. 15

Deficiency payable out of Consolidated Fund.

37. If in the Public Trustee's Account the balance at the credit of the Profit and Loss Account is at any time insufficient to meet the charges thereon, the Colonial Treasurer may from time to time advance such sums out of the Consolidated Fund as may be necessary to meet such charges. Moneys so advanced shall be repaid by the Public Trustee to the Consolidated Fund so soon as there is in the Public Trustee's Account a balance available for such repayment. If the balance in the Profit and Loss Account is more than sufficient to meet the charges thereon, the Public Trustee shall invest one-fourth part of such balance, and shall retain the same with the accumulations thereof as an Assurance and Reserve Fund, out of which the deficiency of any subsequent year may be provided, and shall from time to time, at such times as the Colonial Treasurer shall direct, pay the remaining three-fourths of the excess into the Consolidated Fund as part thereof. 20 25 30

S. R.

S. R.

Payment of salaries and expenses.

38. The Public Trustee shall pay all salaries and other expenses in the general service of the Public Trust Office as he shall be authorised to pay by the Colonial Treasurer and as shall be 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. 35

Colonial Treasurer to have access to accounts, &c.

39. The Colonial Treasurer, and any officer of the Treasury authorised by him, shall at all times have access to all the books, accounts, documents, and papers in the Public Trust Office, and the Public Trustee shall at all times furnish to the Colonial Treasurer all such information as the latter requires. The Auditor-General shall have in respect to the Public Trust Office, and to all the officers and servants employed therein, all the powers which he possesses in respect to the officers and servants in any department of the Civil Service. 40 45

Powers of Auditor-General.

Payments to Public Trustee's Account.

40. Every person into whose hands or under whose control any moneys shall come, which are payable to the Public Trustee, shall pay the same to the Public Trustee's Account as soon as practicable after their receipt. Such person shall be deemed a debtor to the Crown. 50

It shall, notwithstanding, be lawful for any officer, servant, or agent of the Public Trustee to pay, out of any moneys in his hands, any claims which he shall be directed by the Public Trustee to pay.

SHARES, STOCK, OR PROPERTY IN COMPANIES.

41. Where the Public Trustee is now or shall become entitled to shares, stock, or property in any body, whether corporate or not, or in any association, then, notwithstanding any law or provisions affecting the registration of persons holding shares, stock, or property as trustees, or in any other representative capacity, the Public Trustee shall be entitled to be registered as the proprietor of such shares, stock, or property as trustee, or in any other representative capacity, as he may require; but under no circumstances shall the Public Trustee incur any further or greater liability in respect of such shares, stock, or property than to the extent of any assets which at the time of the liability he holds as such trustee or in such other representative capacity.

Shares in companies.

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

MISCELLANEOUS.

42. No bond or security shall be required from the Public Trustee before he is appointed by or under this Act, or any other Act, trustee, executor, administrator, liquidator, receiver, guardian, committee, agent, or attorney.

Public Trustee not required to give bond.

S. R.

43. Any testator may deposit his will in the Public Trust Office for safe custody, or for acceptance or rejection after his death.

Deposit of wills.

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

The Public Trustee, with the consent of the Board, may provisionally consent to act under any will so deposited as aforesaid. ~~but may after the testator's death refuse to so act.~~

S. R.

44. If any appointment of the Public Trustee as trustee, executor, administrator, liquidator, receiver, guardian, committee, agent, or attorney is rejected, notice thereof shall be sent to such persons as the Public Trustee thinks fit. If any property shall have become, by virtue of an appointment which is rejected, vested in the Public Trustee, then by virtue of a rejection as aforesaid such property shall cease to be vested in the Public Trustee and shall become vested in such persons as would have been entitled thereto if such appointment had not been made; and the Public Trustee may, for the purpose of giving effect to such rejection, execute and do all such instruments and things as may be necessary to give effect to such rejection.

Acceptation or rejection by Board of appointment of Public Trustee to be notified to interested persons.

S. R.

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

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

45. When under the Acts hereby repealed or this Act, or under any Act, the Public Trustee is directed to make any payment, upon an order of a Court or Judge being obtained, to any person entitled thereto, he may make a payment if the amount thereof does not exceed fifty pounds without such order; and any payment so made shall be as valid as if authorised by an order of Court. 5

Payment of claims when assets insufficient.

46. Whenever the assets of any testate or intestate estate heretofore or hereafter under administration by the Public Trustee are insufficient to pay the liabilities in full, and no recourse shall have been had to the provisions of "The Administration Act 1879 Amendment Act, 1888," the assets shall be applied subject to the following priorities:— 10

- (1.) In payment of all authorised and legal charges attending the due administration of the estate; 15
- (2.) In payment of funeral charges proportioned, as the Public Trustee thinks proper, to the position of the deceased in his lifetime; 20
- (3.) In payment of medical charges incurred for a period not exceeding three months next immediately preceding the death of the deceased. 25

The balance of the assets shall be applied in accordance with the law and practice for the time being in force with respect to the estate of a bankrupt, and any surplus shall be applied in terms of the will, or the law relating to intestate estates. 30

Notwithstanding the provisions of "The Administration Act 1879 Amendment Act, 1888," it shall not be obligatory upon the Public Trustee, where administering as aforesaid, although the assets are insufficient to pay the liabilities in full, to have recourse to the provisions of that Act or administer such assets thereunder. 35

Provision for closing administration of estate after notice.

47. When a testate or intestate estate is now or hereafter shall be under administration by the Public Trustee, and such administration could be properly closed in a less time than is required by the existing law, the Public Trustee, after giving notice once each week for two weeks in two newspapers at least, published or circulating in the county, borough, city, or other district or locality where the deceased shall have resided or carried on business immediately preceding his decease, or, if the deceased died out of the colony, then in such a manner as a Judge of the Supreme Court may direct, requiring creditors and others to send in to the Public Trustee their claims against the said estate, may, at the expiration of the time limited in such notice, being not less than two calendar months from the first publication thereof, or, in the case of a person dying out of the colony, within such time, not being less than six months, as a Judge of the Supreme Court may direct, 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; and he shall not be liable for the assets, or any part thereof, so distributed, to any person of whose claims he shall not have had notice at the time of distribution of the said assets, or a part 45 50

thereof, as the case may be; but this provision shall not prejudice the rights of any subsequent claimant to establish his right to receive payment from the persons who shall have been paid by the Public Trustee any distributive shares, or the whole residue of the estate, or, in the case of real property, from the person who may have received a conveyance or assurance thereof, or any part thereof, from the Public Trustee in or towards satisfaction of such distributive shares or residue: Provided that if any such estate shall be of less value than fifty pounds it may be distributed or conveyed and assured and dealt with without giving any such notices as aforesaid.

The word "distribute" shall, as to real estate, mean "convey and assure the real estate to the person entitled thereto"; and the words "distributed" and "distribution" shall mean, as to real estate, "conveyed and assured the real estate to the person entitled thereto":

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

48. When the Public Trustee is executor or administrator, or is by law authorised to administer the estate of any deceased person, a certificate under his hand, and sealed with his corporate seal, certifying that he has taken out probate or letters of administration, or is authorised to administer, and stating the date when such probate or letters of administration were granted, or when and how he became authorised to administer, and the name, residence, and occupation of the deceased person, shall, notwithstanding any statute or law to the contrary, be accepted by all Courts, officers, and other persons, whether acting under any Act or not, as sufficient evidence of the death of the deceased person, and of the appointment of the Public Trustee as executor or administrator, or of his right to administer, without production of any other proof whatever.

A certificate under the hand and seal of the Public Trustee to be accepted by all Courts, &c., as sufficient proof of death, and that the Public Trustee is administering.

Such certificate shall be sufficient for the purpose of registering the Public Trustee as proprietor of any estate or interest in any land under "The Land Transfer Act, 1885," or of any shares, stock, or property in any body or association. If any land is subject to the provisions of "The Deeds Registration Act, 1868," such certificate may be registered against such land as in the case of probate or letters of administration, and shall have the same force and effect.

49. With respect to moneys and personal chattels payable or deliverable by the Public Trustee to the subjects of foreign countries resident within such foreign countries, the Governor may, by notice in the *Gazette*, notify that such moneys or personal chattels may be paid or delivered to the chief consular officer for such foreign country in New Zealand on behalf of such subject; and the receipt in writing of such chief consular officer shall be a good discharge to the Public Trustee therefor.

Consular officers in colony to receive residue for resident in foreign countries.

50. When any Court or Judge, except upon the application of the Public Trustee, makes any order directing any payment to be made to the Public Trustee or into the Public Trust Office, or makes any order vesting property in the Public Trustee, or appoints the

Any person obtaining order placing property in Public Trust Office to serve same on Public

Trustee under
certain penalty.

S. R.

Public Trustee trustee, executor, administrator, liquidator, receiver, guardian, or committee, it shall be the duty of the person who obtains such order forthwith thereafter to serve upon the Public Trustee or his agent a copy thereof, and to deliver to the Public Trustee or his agent a statement of the property affected by the order, and where such property is situated or by whom held, so far as the same is known to such person; and in default thereof such person shall be liable to a penalty of not exceeding ten pounds unless such person proves that such default was due to accident or was unavoidable.

Court and Registrars
to see that orders
with particulars of
property sent to
Public Trustee.

51. It shall be the duty of the Registrar or Deputy-Registrar of the Supreme and Native Land Courts, and of the Clerk of a District Court, to see that a copy of such order is delivered or posted by registered letter to the Public Trustee or his agent, together with a statement of the property affected by such order, and where such property is situated, or in whose possession it is, so far as such Registrar, or Deputy-Registrar, or Clerk can ascertain; and such Registrar, or Deputy-Registrar, or Clerk shall, at the time of making an order, ascertain, by such ways and means as he thinks best (and jurisdiction is given hereby for that purpose), the property affected by the order, and where such property is situated, and in whose possession it is.

Existence of any
property in the
hands of any person
or corporation
belonging to a
deceased person
whose estate is
being administered
by Public Trustee to
be disclosed to the
Public Trustee.

52. When any corporation, association, or person is in possession of any property of a deceased person, or where there is to the credit of any deceased person in the books or accounts or otherwise of any corporation, association, or partnership any property or money, or where under any partnership or association any deceased person is entitled to a share in the assets thereof, or his representatives are entitled to any payment as the share in such assets, or where any deceased person is the registered proprietor of any shares in any corporation or association, or where any person is indebted to any deceased person, if such property, money, shares, or debts have heretofore been or shall hereafter be vested in or belong to the Public Trustee, it shall be obligatory on such corporation, association, or person to forthwith give notice to the Public Trustee or his agent of the extent, nature, and situation of such property; and such corporation, association, or person shall be liable to pay to the Public Trustee, as from the time when such notice ought to have been given, interest upon the value of such property after such rate as shall be determined by the Court in which any proceeding may be taken to enforce the same, unless such corporation, association, or person proves to the satisfaction of the Court that the failure to give such notice was due to accident or was unavoidable, or that no loss or damage has been occasioned to the Public Trustee in consequence of such notice not having been given: Provided that the Public Trustee may in any case remit such payment of interest. This provision shall not apply to any officer of the Government as such officer.

ACTIONS AGAINST THE PUBLIC TRUSTEE.

Public Trustee and
officers not to be
personally liable

53. Neither the Public Trustee, nor the Deputy Public Trustee, nor any officer or servant, acting or *bona fide* assuming to act under

any of the authorities contained in or conferred by this Act, shall be personally liable for any act or thing done or omitted, unless the liability shall arise from actual fraud or crime.

54. Where any person, by any act or thing done or omitted by the Public Trustee, the Deputy Public Trustee, or any officer, servant, or person acting or *bonâ fide* assuming to act under this Act, shall sustain any injury, which, if the act or thing done or omitted would have entitled such person to a remedy in respect thereof if the same had been done or omitted by a private person, then such person shall be entitled to the same remedy against the Public Trustee in his corporate capacity as he would be entitled to against a private person, and shall be entitled to be indemnified out of the Public Trustee's Account, and if the same shall be insufficient, then out of such moneys as may be appropriated for such purpose by the General Assembly.

except in case of fraud or crime.

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

REGULATIONS.

55. The Governor in Council may make, revoke, or alter regulations—

- (1.) For the conduct of the business in the Public Trust Office;
- (2.) For determining the duties of the officers, servants, and persons employed therein;
- (3.) For the custody of all property placed therein, and the instruments of title relating thereto;
- (4.) For fixing scales of commissions and other charges to be made by the Public Trustee under this Act;
- (5.) For the receipt and payment of moneys under this Act;
- (6.) For keeping, rendering, and auditing accounts under this Act;
- (7.) For determining what part of and in what securities moneys shall be invested;
- (8.) For the safe custody of securities;
- (9.) For the custody of the moneys in the Public Trustee's Account, and the payment of moneys to or withdrawal of moneys from such account, and the mode of keeping and auditing that account, and any other account that may be deemed necessary in the business of the Public Trust Office;
- (10.) For any object or purpose that may be deemed necessary for the efficient administration of this Act.

And he may specially make regulations under section *twenty-nine* of this Act.

New paragraph.

Every such regulation shall be forthwith laid before both Houses of the General Assembly if in session, or if not in session, then within ten days after the next meeting thereof.

S. R.

56. Except in so far as by this Act it is expressly otherwise provided, all rights, powers, and remedies conferred by any other statutes or laws upon any Court or Judge, or upon the Public Trustee or any other person, shall remain unrestricted, and the provisions of this Act shall be read and construed as conferring upon such Courts, Judges, and the Public Trustee or other persons the rights, powers, and remedies hereby provided by way of addition to and not in derogation of any rights, powers, and remedies conferred by the said statutes or laws, and so that the rights, powers, and remedies conferred by the said statutes or laws, and by this Act, shall be

Reservation of existing powers except as otherwise provided.

capable of being exercised independently the one of the other, or in aid the one of the other; but, nevertheless, the express provisions of this Act shall not be restricted by the said statutes or laws.

REPEALS.

Struck out.

Repeals.

57. The following Acts are hereby repealed:—

“ The Public Trust Office Act, 1872; ”

“ The Public Trust Office Act Amendment Act, 1873; ”

“ The Public Trust Office Act, 1876; ”

S. R.

“ The Public Trust Office Act Amendment Act, 1891; ”

“ The Public Trust Office Act Amendment Act, 1893.”

Notwithstanding the repeals hereby effected, all rights and remedies existing before such repeals shall remain and continue as if this Act had not been passed.

New clause.

S. R.

57. The Acts specified in the Schedule to this Act, saving the exception therein mentioned, are hereby repealed.

Appointments under repealed Acts to be subject to this Act.

58. The Board, the Public Trustee, and the Deputy Public Trustee, and all officers and servants appointed under the authority of the Acts hereby repealed, shall be deemed to have been duly appointed to such offices by and subject to the provisions of this Act, and shall have paid to them the same salaries and allowances as they were respectively entitled to under the Acts hereby repealed when this Act came into operation. Sureties for the faithful discharge of the duties of the Public Trustee, the Deputy Public Trustee, and of the other officers and servants in the employ of the Public Trust Office, shall remain and continue bound and unaffected, as if this Act had been in force when the liability was entered into.

Struck out.

Powers, &c., vested in Board, Public Trustee, and officers under repealed Acts to vest under this Act.

S. R.

59. Powers, duties, and functions which immediately before the repeals hereby effected were vested in or to be exercised or performed by the Board, or the Public Trustee, or the Deputy Public Trustee, or by any officers or servants of the Public Trust Office, shall vest in and shall be exercised and performed subject to this Act by the Board, the Public Trustee, the Deputy Public Trustee, and the officers and servants appointed by or under this Act.

Property, &c., vested in Public Trustee before this Act to continue so vested subject hereto.

S. R.

59. Property, rights, powers, *duties, functions*, and remedies which immediately before the repeals hereunder were under the repealed Acts vested in or belonged to the Public Trustee, or any person whomsoever, shall, except in so far as altered by this Act, continue to be vested in and belong to the Public Trustee as constituted by this Act, and such persons, respectively.

Operation of “The Interpretation Act, 1888,” as to repealed Acts.

60. Nothing herein contained shall limit the effect or operation of “The Interpretation Act, 1888,” as to the operation of Acts repealed by this Act.

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

61. The following Acts:—

“ The Administration Act, 1879; ”

“ The Administration Act 1879 Amendment Act, 1885; ”

“ The Administration Extension Act, 1886; ”

“ The Administration Act 1879 Amendment Act, 1888; ”

“ The Administration Act Amendment Act, 1890; ”

“ The Trustee Act, 1883; ”

“ The Trustee Act 1883 Amendment Act, 1891 ; ”

“ The Settled Lands Act, 1886,” and the amendments thereof ;

5 and all Acts amending or passed in substitution thereof respectively, and for the time being in force, shall be read and construed as not to contrarily affect any of the express provisions of this Act, and shall be read and construed as subordinate to the provisions of this Act.

Struck out.

10 **63.** Notwithstanding the repeals hereby effected the provisions of section eighteen of “ The Public Trust Office Acts Amendment Act, 1893,” shall remain and continue in full force and effect.

Saving of section 18 of “ The Public Trust Office Acts Amendment Act, 1893.”

S. R.

15 **64 62.** The Order in Council purporting to be made under the authority of “ The Public Trust Office Act Amendment Act, 1873,” and “ The Public Trust Office Acts Amendment Act, 1891,” on the third day of April, one thousand eight hundred and ninety-four, is hereby validated ; but nevertheless the same may be amended or altered ~~under~~ *in accordance with* the provisions of this statute.

Validation of Order in Council.

S. R.

New matter.

SCHEDULE.

- “ The Public Trust Office Act, 1872 ” ;
- “ The Public Trust Office Act Amendment Act, 1873 ” ;
- “ The Public Trust Office Act, 1876 ” ;
- “ The Public Trust Office Act Amendment Act, 1891 ” ;
- “ The Public Trust Office Act Amendment Act, 1893.”

ENACTMENT OF FORMER ACT EXCEPTED FROM THE REPEAL AND CONTINUED IN FORCE.

“ The Public Trust Office Act Amendment Act, 1893 ” (No. 45), Section 18 :—

WHEREAS prior to the passing of “ The Auckland Hospital Reserves Act, 1883,” portions of the land described in the Schedule to that Act had by the Superintendent of the Province of Auckland been leased under statutory powers, and such leases, or some of them, contained covenants by the lessor to the effect that any building or erection which might be standing on the land leased and erected by virtue of the lease at the expiration of the term should be then fairly valued as thereby provided, and the amount of such valuation should be paid to the lessee : And whereas doubts have arisen whether such covenants are valid : And whereas some of the said leases have by effluxion of time expired, and pursuant to such covenants valuations have been made, and such valuations in the aggregate amount to the sum of one thousand two hundred and twenty-five pounds : And whereas in good faith such sum ought to be paid, but the Public Trustee has no fund out of which the same can be lawfully paid, and it is just that provision should be made for such payment :

S. R.

Be it therefore further enacted as follows :—

(a.) The Colonial Treasurer may, out of the Consolidated Fund, pay to the several persons who, according to such valuations as have already been made as aforesaid, are entitled thereto the respective amount of such valuations. The amount so paid shall, subject to any charge to which such lands are now subject, be a charge in favour of Her Majesty upon all the lands described in the Schedule to “ The Auckland Hospital Reserves Act, 1883,” with interest thereon at the rate of seven pounds per centum per annum, payable half-yearly ; and the Public Trustee shall, out of any rent or income arising from such lands, pay such interest to Her Majesty, and may, if he think fit, appropriate in each year not more than two pounds per centum of the rents and income of such lands for the purpose of discharging the capital sum advanced.

(b.) This section shall be subject to the provisions of “ The Auckland Hospital Reserves Act Amendment Act, 1888.”