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[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1933.

A BILL

To confer certain additional powers, exonerations, and immunities on the public trustee; to provide for the term of office of the public trustee and the method of removing him from office, for the appointment of deputy public trustees, and for the definition of their powers and duties; to regulate the powers, duties, exonerations, and immunities of a person acting jointly with the public trustee; to provide for the constitution, management, and investment of a common fund; to validate certain matters; to amend the Public Trustee Act, 1913, the Stamp Duties Act, 1920-1932, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Public Trustee (Amendment) Act, 1933." Short title.

(2) The Public Trustee Act, 1913, as amended by subsequent Acts is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the "Public Trustee Act, 1913-1933."

2. (1) The Principal Act is amended by inserting at the end of section five the following new subsections:— Amendment of Act No. 19, 1913.

(2) The officer for the time being holding the office of public trustee shall retire from office upon the day on which he attains the age of seventy years unless he is granted retiring leave, in which case he shall retire on the expiration of such leave. Sec. 5. (Office of public trustee.)

(3) The officer for the time being holding the office of public trustee may be suspended from his office by the Governor for misbehaviour or incompetence, but shall not be removed from office except as hereinafter provided—

(a) The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven sitting days if Parliament is then in session, and, if not, then within seven sittings days after the commencement of the next session;

(b) The officer suspended under this section shall be restored to office unless each House of Parliament within twenty-one sitting days from the time when such statement was laid before it declares by resolution that such officer ought to be removed from office; and if within the time aforesaid each House of Parliament so declares such officer shall be removed from office by the Governor accordingly.

(4)

(4) Nothing contained in this Act shall affect the rights accrued or accruing under the Public Service Act, 1902, the Public Service (Amendment) Act, 1919, or the Superannuation Act, 1916-1930, or under any of those Acts as amended by subsequent Acts, to any officer of the Public Service appointed as public trustee.

(5) Any officer of the Public Service appointed as public trustee shall continue to contribute to any fund or account and be entitled to receive any deferred or extended leave and any pension, payment, or gratuity, as if he were an officer within the meaning of the Public Service Act, 1902, the Public Service (Amendment) Act, 1919, or the Superannuation Act, 1916-1930, as the case may be, or under any of those Acts as amended by subsequent Acts.

(2) Subsection one of this section shall be deemed to have commenced on the twentieth day of February, one thousand nine hundred and thirty-three.

3. The Principal Act is further amended as follows:—

Further amendment of Act No. 19, 1913. Substituted sec. 6.

(a) by omitting section six and by inserting in lieu thereof the following section:—

6. (1) The Governor may appoint one or more officers to be called deputy public trustees.

Appointment, powers, and duties of deputy public trustees.

(2) Subject to this Act, whenever under or pursuant to this or any other Act, or any rule, regulation, ordinance or document, anything may be done or is appointed to be done by, or any reference is made to the public trustee, the same may be lawfully done by or the reference shall be deemed to extend to any deputy public trustee, and while so acting the deputy public trustee shall have the same powers, duties, and liabilities and be entitled to the same immunities as the public trustee.

cf. Public Curator Act, 1915 (Q'land.), s. 6 (5).

(3) Every deputy public trustee shall exercise his office subject to such conditions and restrictions (if any) as the public trustee may impose—

(a) generally; or

(b)

- (b) in relation to any specified matter or class of matters; or
- (c) in relation to all matters other than any specified matter or class of matters.

(4) No person shall be concerned to see or inquire whether—

Public
Curator
Act, 1915
(Q'land.),
s. 6 (6).

- (a) any acts, dealings or transactions by or with the public trustee or any of his deputies, officers or agents are or are not within the powers of the public trustee or of such deputy, officer, or agent; or
- (b) in the case of dealings or transactions with a deputy public trustee whether any conditions or restrictions have been imposed upon the exercise of the powers of such deputy public trustee, or as to his authority, or as to the necessity for or propriety of his appointment; and all acts or things done or omitted by such deputy shall be as valid and effectual and shall have the same consequences as if the same had been done or omitted by the public trustee.

- (b) (i) by inserting in subsection one of section nine after the word "otherwise" the words "and in respect of the services done or performed by the public trustee or any of his officers in or in connection with the administration or distribution of estates such costs and charges whether by scale or otherwise";
- (ii) by inserting in the same subsection after the word "fees" where secondly occurring the words "costs and charges";
- (iii) by inserting in subsections two and three of the same section after the word "fees" wherever occurring the words "costs and charges";
- (iv) by inserting in subsection three of the same section after the word "Act" the words "other

Sec. 9.
(Fees
charged.)

“ other than a loss occasioned by any insufficiency of the common fund to meet lawful claims on that fund;

(v) by inserting in subsection four of the same section after the word “fees” the words “ costs, charges ”;

(c) (i) by inserting at the end of subsection one of section ten the following new paragraph:— Sec. 10. (Appointment and duties of agents.)

Any officer of the Public Service may be so appointed with the concurrence of the Public Service Board and any officer of police or of any corporation representing the Crown may be so appointed with the concurrence of the Commissioner of Police or the corporation, as the case may be.

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following new subsections:—

(2) Every such agent not being a clerk of petty sessions or other officer as aforesaid shall if the public trustee so requires, give security to the satisfaction of the public trustee for the due performance of his duties and the accounting for money received by him.

(3) Any such agent may be authorised by the public trustee to receive and pay moneys and to receive and deliver other personal property and the public trustee shall not by reason only of his having made such appointment be responsible for any loss arising thereby. cf. 15 Geo. V, c. 19, s. 23.

This subsection shall not exempt the public trustee from any liability in case he permits money or property to remain in the hands or under the control of the agent for a period longer than is reasonably necessary to enable the agent to pay or transfer the same to the public trustee.

4. The Principal Act is further amended—

Further amendment of Act No. 19, 1913.

- (a) (i) by inserting at the end of subsection one of section twelve the words:—

Sec. 12. (General powers and duties.)

“ The public trustee may be appointed and may act jointly with any other person in any such capacity as is mentioned in this subsection.”

- (ii) by inserting at the end of the same section the following new subsection:—

(5) Where the public trustee is appointed and acts jointly with any other person in any such capacity as is mentioned in subsection one of this section, the powers, authorities, duties, exonerations, and immunities conferred by this Act on the public trustee shall be exercised, performed and enjoyed by the person appointed and acting jointly with the public trustee.

- (b) by inserting at the end of subsection one of section eighteen the words “ if the application is made within three months after the death of the deceased, but the public trustee shall be preferred unless for good cause shown to the contrary, if the application is made after the expiration of three months from the death of the deceased.

Sec. 18. (Grant of probate or administration to the public trustee.)

The court may order the costs of the public trustee to be paid out of the estate in any event.”

- (c) by omitting section 18A, and by inserting in lieu thereof the following new section:—

Substituted sec. 18A.

18A. (1) Where any person dies testate, in or out of New South Wales, leaving property in New South Wales, the gross value of which, or the gross value of any part thereof not fully administered, as estimated by the public trustee, does not at the time of the election in this subsection mentioned, exceed eight hundred pounds, and no person has obtained probate of the will of the deceased or some person has obtained probate

Election by public trustee to administer.

probate and has died without fully administering such property, the public trustee in any case in which he is entitled to obtain probate may, in lieu of obtaining probate, file in the office of the Supreme Court an election under his hand and seal setting forth—

- (a) the name, residence, and occupation (as far as then known to the public trustee) of the testator at the date of his death; and
- (b) the property forming his estate or the unadministered portion of his estate, as the case may be; and
- (c) the date of his death as then known to the public trustee; and
- (d) stating that, after due inquiries, he believes that the document annexed to such election is the testator's last will, and that such will has been validly executed according to the law governing the execution of wills; and
- (e) in an appropriate case that the executor to whom probate was granted is dead, and the date of his death as then known to the public trustee, and that probate of his will has not been granted,

and electing to administer the property according to the provisions of the will of the testator.

(2) Where any person dies intestate, in or out of New South Wales, leaving property in New South Wales, the gross value of which or of any part thereof not fully administered, as estimated by the public trustee, does not at the time of the election in this subsection mentioned exceed eight hundred pounds, and no person has taken out letters of administration or some person has taken out letters of administration and died without fully administering such property, the public trustee, in any case where he is entitled to take out letters of administration and in

in lieu of taking out such letters, may file in the office of the Supreme Court an election under his hand and seal setting forth—

- (a) the name, residence and occupation (so far as then known to the public trustee) of the intestate at the date of his death; and
- (b) the property forming his estate or the unadministered portion of his estate, as the case may be; and
- (c) the date of his death, as then known to the public trustee; and
- (d) in an appropriate case that the administrator is dead and the date of his death as then known to the public trustee,

and electing to administer such estate.

(3) On any election under this section being filed, the public trustee shall be deemed to be executor or administrator (as the case may be) in like manner in all respects as if probate or administration had been duly granted to him, after due citation of all persons who would require to be cited upon application made for any such grant.

(4) The public trustee shall publish in the Gazette, and in one daily newspaper published in Sydney, and if the deceased resided more than thirty miles from Sydney, in a newspaper circulating in the district where he resided at the time of his death, a notice that he has made such an election.

Such notice shall be conclusive evidence that the public trustee is rightly entitled to administer under this section.

(5) If after filing any election the gross value of the property to be administered is found to exceed the sum of one thousand pounds, the public trustee shall, as soon as practicable thereafter, file in the said office of the Supreme Court a memorandum under his hand stating the fact, and proceed in the ordinary manner to obtain probate or letters of administration.

(6)

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

(7) This section shall extend to cases in which the death of the testator or intestate occurred prior to the commencement of the Public Trustee (Amendment) Act, 1933, as well as to cases in which death occurred after such commencement.

(d) by inserting next after section 18A the following new section:— New sec. 18B.

18B. (1) Where any person has by his will appointed an executor and has expressly or impliedly appointed such executor to be a trustee of his will, and administration with the will annexed has been granted to the public trustee, or the public trustee has filed an election to administer, the public trustee shall, by virtue of the grant or of the election, as the case may be, and without any further appointment, be deemed to be appointed a trustee of the will in the place of the executor thereby appointed. Public trustee acting as administrator with the will annexed deemed to be trustee of will.

(2) This section extends to a case in which the grant or election was made or filed before as well as to a case in which the grant or election is made or filed after the commencement of the Public Trustee (Amendment) Act, 1933.

5. The Principal Act is further amended by inserting next after section 18B inserted by section four of this Act the following new sections, which shall be read as sections nineteen, twenty, twenty-one and twenty-two:— Further amendment of Act No. 19, 1913. New secs. 19-22.

19. (1) Where any person who at the time of his death was domiciled or had property in New South Wales, dies testate, whether such death occurred within or outside New South Wales, and whether before or after the commencement of the Public Trustee (Amendment) Act, 1933, the court may, on the Order to collect testate estate. cf. No. 13, 1898, s. 116.

the application of the public trustee, grant to him an order to collect the estate of such person in any of the following cases:—

- (a) where such person leaves no executor willing and capable of acting in execution of his will resident within the jurisdiction;
- (b) where the executors named renounce probate of the will of the deceased;
- (c) where probate or administration with the will annexed is not applied for within three months after the death of such person;
- (d) where, after the expiration of sixty days from such death, there is no reasonable probability of application being made within such period as aforesaid;
- (e) where the estate or any portion thereof is liable to waste, and the executor—
 - (i) is absent from the locality of the estate; or
 - (ii) is not known; or
 - (iii) has not been found; or
 - (iv) requests the public trustee in writing to apply for such order;
- (f) where the estate or any portion thereof is—
 - (i) of a perishable nature; or
 - (ii) in danger of being lost or destroyed; or
- (g) where great expense may be incurred by reason of delay.

(2) The court may in any case require the public trustee to—

- (a) give such notices, or
- (b) cite such persons, or
- (c) produce such evidence

as it may think fit before granting the order applied for, and may make such order for a limited time, or limited to a portion of the estate or otherwise.

20. (1) An order to collect the estate of any deceased person shall give to the public trustee the same powers, rights, immunities, and duties in respect

Effect of order. cf. No. 13, 1898, s. 117.

respect of such estate, except as hereby enacted, as he would have had if administration had been granted to him.

(2) Subject to the provisions of this Act, all laws now or hereafter in force in reference to the administration of the estates of deceased persons shall apply to the administration of estates by the public trustee.

21. (1) Notwithstanding any such order to collect, or any election by the public trustee to administer, the court may grant probate of the will or administration with the will annexed of the estate of any deceased person to any person entitled to the same in such manner and subject to such limitations or conditions as it thinks proper.

Probates and administrations may be granted notwithstanding order to collect or election by public trustee.

(2) No application for any such grant shall be made until seven days after notice in writing of the intention to apply for the same has been left at the office of the public trustee.

cf. No. 13, 1898, s. 118.

22. (1) Immediately on the grant of any such probate or administration, all the interest, powers, rights, and duties of the public trustee (except such rights as are conferred by this section) in regard to the estate of the deceased person whose estate is affected by such grant shall cease, and all liabilities of the public trustee under any contract or agreement entered into by him in relation to such estate or any part thereof shall be and become the liabilities of the executor or administrator to whom such probate or administration is granted, and the public trustee shall be free and discharged therefrom.

On such grant, duties and liabilities of public trustee to cease.

cf. *Ibid.* s. 119.

(2) Such portion of the estate of such person as is left unadministered by the public trustee, and all rights of the public trustee in respect thereof shall vest in the executor or administrator to whom such probate or administration is granted.

(3) Nothing in this section contained shall interfere with the allowance and payment of—

(a) all money due for the commission of the public trustee or his agents; and

(b).

(b) the necessary outlay, disbursements, costs, charges, and expenses made or incurred by the public trustee in relation to such estate, including all costs of and incidental to his appearing on the application for such probate or administration.

(4) Section eighty-one of the Wills, Probate and Administration Act, 1898-1932, shall extend mutatis mutandis to proceedings by or against the public trustee acting under an order to collect or as executor or administrator under an election when probate or administration is subsequently granted to another person and section ninety of that Act shall in a like case extend mutatis mutandis to the public trustee so acting and to payments made by him.

(5) Nothing herein contained shall relieve the public trustee from his liability (if any) to the persons beneficially entitled in respect of his management of the estate up to the time of granting such probate or administration.

6. The Principal Act is further amended—

(a) (i) by inserting at the end of subsection one of section twenty-three the words "Any order so made shall declare the date on which such person is to be presumed to have died";

(ii) by inserting in paragraph (b) of subsection two of the same section after the word "manage" the words "and administer";

(b) (i) by omitting from section twenty-six the word "personal" wherever occurring;

(ii) by inserting at the end of the same section the following new subsection:—

(2) The Governor may appoint an agent of the public trustee in Great Britain or Northern Ireland, or in any of His Majesty's

Further amendment of Act No. 19, 1913.

Sec. 23. (When there is reasonable ground to believe that any person has died intestate leaving property in the jurisdiction the public trustee may obtain order to administer without strict proof of death.)

Sec. 26. (Consular officers in New South Wales to receive residue for residents in foreign countries.)

Majesty's dominions or possessions or in any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by any Government on behalf of His Majesty.

Every such appointment shall be made by arrangement with the Government of Great Britain, Northern Ireland, the dominion, possession, or territory within which the agent is appointed.

With respect to any moneys or chattels payable or deliverable by the public trustee to any person resident in the locality in which an agent has been appointed the public trustee may, if authorised by the Minister, pay or deliver the same to such agent.

- (c) by inserting next before the subheading preceding section thirty-three the following subheading and new section:—

The public trustee as attorney.

32A. (1) Where the public trustee executes any document as attorney it shall not be obligatory for him, nor shall any person require him, to furnish evidence by way of statutory declaration or otherwise that no notice or information of the revocation of the power of attorney by death or otherwise has been received by him.

Evidence of non-revocation not necessary where public trustee executes as attorney.
cf. 12 Geo. V No. 48 (N.Z.), s. 98.

(2) The execution by the public trustee of any such document as such attorney shall be accepted by all persons as proof of such non-revocation at the time when such document was executed.

- (d) by omitting sections thirty-three and thirty-four and by inserting in lieu thereof the following new sections:—

33. Where the net value as estimated by the public trustee of the residue of an intestate estate under administration by the public trustee does not exceed one hundred pounds he may, if he thinks fit, pay or transfer the whole of

Substituted secs. 33 and 34.

Payment to widow, widower, or child of intestate.

of such residue or any part thereof to the widow or widower or when there is no widow or widower to a child (over the age of twenty-one years) of the intestate whose receipt shall be a good discharge to the public trustee, to be applied for the benefit of the persons beneficially entitled thereto.

34. (1) When the public trustee holds in trust for an infant a share or interest not exceeding five hundred pounds in the estate of any testator or intestate or under any settlement or other trust instrument or in any money paid to him under section forty-seven of the Trustee Act, 1925, as amended by subsequent Acts, the public trustee may exercise in respect of the whole of such share or interest all the powers conferred by section forty-four of the Trustee Act, 1925, as so amended, in respect of one-half of the value of the capital of trust property or any share thereof. **Advancement.**

(2) This section applies to all trusts whether created before or after the commencement of the Public Trustee (Amendment) Act, 1933.

(3) The public trustee may pay or deliver such share or interest or any part thereof to any person for the advancement or benefit of such infant and such person's receipt shall be a good discharge to the public trustee.

(4) The public trustee shall have absolute and unfettered discretion to decide what is in a particular case advancement or benefit within the meaning of this section.

(e) by inserting next after section thirty-four the following new section:— **New sec. 34A**

34A. (1) The public trustee may make advances out of the public trustee's account or out of moneys standing to the credit of the common fund for the purposes of any trust or estate in course of administration or about to be administered by him. **Advances for administration purposes or against shares. cf. Public Curator Act, 1915 (Q'land), s. 21.**

(2)

(2) Where an estate is under administration by him and there is no money or not sufficient money available to make payments on account of such estate whether to the persons entitled thereto or to a share or interest therein or otherwise, he may advance and pay out of the public trustee's account or out of the common fund for or on account of such estate any sum of money (not exceeding in the whole one-half the total value of the property) which he is authorised or required to pay.

(3) Where an estate is under administration by him and any person entitled to a share of that estate desires an advance against his share, he may make advances out of the public trustee's account or out of the common fund to that person not exceeding in the whole one-half of the value of the share as estimated by the public trustee.

(4) All sums so advanced, with all interest thereon, shall be a first charge upon all the property of the estate, or the share advanced against, as the case may be, and shall bear interest at the rate fixed by the public trustee.

(5) All interest received under this provision shall be paid into the fund or account from which the advance was made.

(6) A certificate under the hand and seal of the public trustee stating the amount owing for advances and interest on any specified date, by the estate, or person to whom the advances were made, and the share if any against which they are made, shall be sufficient evidence of the facts until the contrary is proved.

(f) (i) by inserting at the end of paragraph (j) of subsection one of section thirty-five the following words:—"Expenses may include the reasonable cost of the erection of a tombstone on the grave of his testator or intestate";

Sec. 35.
(General powers of public trustee.)

(ii)

(ii) by inserting at the end of the same subsection the following new paragraphs:—

(n) in any case in which the cost of repairs does not exceed the sum of two hundred pounds apportion the same between capital and income and in respect of any portion of such cost attributable to income pay the whole or any part thereof out of capital and arrange on such terms as he may consider equitable for the recoupment of such capital out of future income and either with or without interest as he may think fit;

(o) determine for the purposes of distribution the domicile of any deceased person whose estate is being administered by the public trustee;

(p) carry on a business which the deceased person had carried on, for such time and to such extent as may appear to the public trustee desirable for the purpose of more advantageously disposing of or winding up the business and may employ therein such of the assets of the deceased as he may think necessary;

(q) postpone the sale, calling in and conversion of any real or personal property for so long as he thinks fit, notwithstanding that it may be of a wasting, speculative, or reversionary nature;

(iii) by omitting from subsection two of the same section the letters “(n)” “(o)” and “(p)” opposite the paragraphs thereof and by inserting in lieu of such letters the symbols “(i)” “(ii)” and “(iii)” respectively;

(iv)

- (iv) by omitting from paragraph (i) of the same subsection the words " five hundred pounds " and by inserting in lieu thereof the words " one thousand pounds ";
- (v) by omitting from paragraph (ii) of the same subsection the words " two hundred and fifty pounds " where firstly occurring and by inserting in lieu thereof the words " five hundred pounds ";
- (vi) by omitting from paragraph (iii) of the same subsection the words " five hundred pounds " and by inserting in lieu thereof the words " one thousand pounds ";
- (vii) by inserting after the figures " 1919 " in the same subsection wherever occurring the symbol and figures " -1932 ";
- (viii) by inserting next after the same subsection the following new subsections:—

(3) Where the public trustee has made a determination under paragraph (o) of subsection one of this section he shall not be liable in respect of any assets distributed in accordance with such determination, but any person claiming to be entitled thereto may follow the assets or estate or any part thereof into the hands of the persons or any of them amongst whom the same may have been distributed.

(4) Where the public trustee postpones the sale, calling in, and conversion of any property under the power conferred by paragraph (q) of subsection one of this section, then, pending such sale, calling in, and conversion, the whole of the net income of property actually producing income shall be applied as income; but on such sale, calling in and conversion, or on the falling in of any reversionary property, no part of the proceeds of such sale, calling in, conversion, or falling in shall be paid or applied as past income;

(g)

(g) by inserting next after section thirty-five the following new sections:—

New secs.
35A-35H.

35A. The public trustee may appear before the Supreme Court in its Equitable or Probate Jurisdictions either personally or by his deputy or by an officer appointed by him in writing for that purpose, in respect of—

Public trustee may appear before Supreme Court by his deputy or by any officer appointed for the purpose.

- (a) any application made for a grant of probate or of letters of administration or for an order to collect; or
- (b) any proceedings arising out of or concerning or in any way affecting any estate being administered by or being in the hands of the public trustee.

35B. (1) Where any person claims to recover from the public trustee any real or personal property, or any share or interest in any estate and the value of such property, share or interest does not exceed two hundred pounds, and the public trustee rejects such claim, the public trustee may serve upon the person by whom or on whose behalf the claim is made a notice calling upon him to take legal proceedings within a period of two months to establish or enforce the claim and also to prosecute the proceedings with all due diligence.

Public trustee may bar claim of creditor if not prosecuted. cf. Public Trust Office Amendment Act, 1921 (N.Z.), s. 89.

(2) If such proceedings are not commenced by such person within the said period, or if commenced are dismissed for want of prosecution, such claim shall thereupon be barred and become irrevocable, and the public trustee may proceed to administer and distribute the estate disregarding such claim.

(3) The powers given by this section shall be in addition to the powers conferred by section ninety-three of the Wills, Probate and Administration Act, 1898-1932.

35c.

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35c. (1) Any notice required or authorised to be served by the public trustee, whether under the authority of any Act or not, shall be in writing and shall be sufficiently served—

Service of notices. cf. 1919, No. 6, s. 170.

- (a) if delivered personally;
- (b) if left at the last known place of abode or business in New South Wales of the person to be served, or, where such person is a mortgagor in possession or a lessee, if left for him at any occupied house or building comprised in the lease or mortgage, or in the case of a mining lease if left for the lessee at the office or counting house of the mine;
- (c) if sent by post in a registered letter addressed to the person to be served, by name, at his aforesaid place of abode or business, and if that letter is not returned through the post office undelivered; and such service shall be deemed to be made at the time when the registered letter would in the ordinary course be delivered;
- (d) in such manner as the court may direct.

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall, if served otherwise than by registered letter, be sufficient although addressed to the lessee or mortgagor by that designation only, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3) This section does not apply to notices served in proceedings in any court.

(4) This section applies only if and so far as a contrary intention is not expressed in any instrument, under or by virtue of which the public trustee is acting, and shall have effect subject to the provisions of such instrument.

(5)

(5) In the interpretation of this section the word "mortgagor" shall include the owner of the equity of redemption for the time being, and the word "lessee" shall include sub-lessee and assignee of the lease.

35d. (1) The public trustee may require any person to deliver, convey, or transfer to him or to him and his co-executor or co-trustee, if any, any property to which he is or he and his co-executor or co-trustee, as the case may be, are entitled. ^{Power to get in trust property.}

(2) For the purpose of ascertaining whether any person is possessed or has the control of any property which should be so delivered, conveyed, or transferred, the public trustee may institute such enquiries as he thinks proper, and may, by summons under his hand and seal, require any person to appear before him or a police or stipendiary magistrate, produce all documents in the custody, control or power of and answer upon oath all questions that may be put to such person with reference to any property.

The public trustee shall pay or tender to the person so summoned the same amount of conduct money as such person would have been entitled to had he been summoned as a witness in a district court action.

(3) If any person shall fail to so deliver, convey, or transfer any property as aforesaid, or if the procedure in subsection two of this section shall fail to elicit the particulars required, or if such person shall fail to attend without valid excuse pursuant to such summons, the public trustee may take out a summons requiring such person, or any person who may be supposed to be in possession of information relevant to the matter under investigation, to appear before the court for the purpose of being examined and to produce to the court all documents in his custody, control or power touching such matters. If

If the court shall be of opinion that any such person is possessed or has the control of any property that should be so delivered, conveyed, or transferred as aforesaid, the court may order such person to deliver, convey, or transfer to the public trustee or to the public trustee and his co-executor or co-trustee, as the case may be, all such property within such time as the court may fix.

The court may order that any document produced be delivered to the public trustee.

Such order may be made in the absence of the person summoned, if the summons shall have been duly served upon him, or the court shall be satisfied that reasonable efforts have been made to serve the same.

(4) All costs, charges and expenses of and incidental to any proceedings under this section shall, in priority to all other claims, be a charge on and payable out of the general funds of the estate or matter in connection with which the proceedings have been taken, or a particular portion thereof, if the court shall so order.

The court may order all or any part of such costs, charges and expenses to be paid by any such person as aforesaid.

(5) Any person who shall fail, without valid excuse, to attend before the court pursuant to such summons, or who, upon attending, shall refuse to be sworn or shall refuse or neglect to answer any relevant question put to him by or on behalf of the public trustee, or shall answer evasively, or who, having been summoned to produce any documents, shall fail to produce the same without valid excuse, or to deliver the same to the public trustee when so ordered by the court, or who shall disobey any other order made by the court upon the hearing of such summons, shall be guilty of contempt of court and be punishable accordingly.

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The court may also order such person to pay the costs and expenses of and incidental to any proceedings under this section.

Any such person wilfully refusing or neglecting to comply with any requirement of the public trustee made pursuant to subsection one of this section or to appear upon a summons issued pursuant to subsection two of this section shall be liable on summary conviction to a penalty not exceeding two hundred pounds recoverable with costs by the public trustee.

Any such penalty and costs shall be paid to the public trustee and be credited by him to the estate or matter in connection with which the proceedings have been taken.

(6) In this section the term "documents" includes books, papers, deeds, probates, letters of administration, and any writings whatsoever, including abstracts, extracts or copies of originals.

35E. (1) Subject to this Act and to the terms of any particular authority or trust, the public trustee may, in the management or administration of any matter, trust or estate, or the performance of any power or duty under this Act, act on any information which he believes to be credible (though less than legal evidence) as to matters of fact.

Allowance of claims. cf. Public Curator Act, 1915 (Q'land), s. 66.

(2) The public trustee may allow any claim which is made upon or before him upon the statutory declaration of the claimant alone or, where he shall think fit to call for further evidence, upon such further evidence or any part thereof as he shall think fit.

(3) The public trustee may at any time require a statutory declaration or other evidence which he may think necessary that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until such declaration or evidence is produced.

(4)

(4) If acting in good faith, the public trustee shall not be liable for accepting as sufficient evidence as to the statements therein contained any written statement or statutory declaration by any person, in or out of New South Wales, whom he believes to be trustworthy, as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the right or title to any estate or any part thereof may depend and acting thereon accordingly.

35F. (1) Where any claim is made by any person against any estate or property under administration by or in the hands of the public trustee, whether as owner, creditor, beneficiary, or otherwise, the public trustee, if in doubt as to the validity of such claim, may institute such enquiries as he shall think proper regarding such claim, and may take out a summons requiring the claimant and any other persons to appear before the court and produce all documents in his or their custody, control or power and answer all questions that may be put to them respectively with reference to such claim and such order may be made upon the hearing of any such summons as to the court may seem just.

Public trustee may institute inquiry as to validity of claim.
cf. Public Curator Act, 1915 (Q'land), s. 67.

The public trustee shall pay or tender to any person so summoned the same amount of conduct money as such person would be entitled to if he had been summoned as a witness in a suit before the court.

(2) If, without valid excuse, the claimant or any such other person shall fail to attend pursuant to the summons, or shall refuse or fail to truly answer any relevant question put to him by or on behalf of the public trustee, or shall answer evasively, it shall be lawful for the public trustee, by direction of the court, to reject the claim and the court may order the claimant to pay a penalty not exceeding *ten* pounds, which shall

shall be paid to the public trustee and be credited by him to the estate or matter in connection with which the proceedings have been taken.

(3) All costs, charges and expenses of and incidental to any proceedings under this section shall, in priority to all other claims, be a charge on and payable out of the general funds of the estate or matter in connection with which the proceedings have been taken or a particular portion thereof if the court shall so order.

The court may order all or any part of such costs, charges and expenses to be paid by any such person as aforesaid.

35G. The public trustee may, if the special circumstances of the case appear to him to render it desirable, deliver or pay to his co-executor or co-trustee or allow him to receive property, moneys or income of the trust estate or any part thereof, on such co-executor or co-trustee undertaking to apply the same in accordance with the provisions concerning the same contained in the instrument creating the trust and, if there be no such provisions, then in accordance with the directions of the public trustee.

Public trustee may delegate certain functions.
cf. Public Curator Act 1915 (Q'land), s. 76 (5).

35H. The public trustee may pay deliver or forward any money, goods or chattels belonging to an estate whether under administration by him or not in the manner directed by an order in writing addressed to him purporting to be signed by any executor, administrator, trustee, beneficiary or next-of-kin without the necessity for verifying the signature on any such order.

Public trustee may pay, deliver or forward property upon order purporting to be signed by person entitled.

7. The Principal Act is further amended—

Further amendment of Act No. 19, 1913.

(a) by inserting at the end of subsection one of section thirty-six the following new subsection:

Sec. 36.
(Manner of investment.)

(1A) The public trustee may include in the same investment money comprising the whole or part of different shares, estates or funds held

New sub-sec. (1A).

or

or being administered by him, and may apportion the interest received amongst the shares, estates or funds included in the investment.

- (b) by inserting next after section thirty-six the following new sections:—

New secs. 36A-36H.

36A. (1) Subject as is provided in section 36B of this Act all capital moneys, however arising, whether before or after the commencement of the Public Trustee (Amendment) Act, 1933, and whether directed to be invested or not, and, unless expressly forbidden to be so invested, shall, as from a day to be appointed by the Governor and notified by proclamation published in the Gazette, be one common fund (in this Act referred to as "the common fund") and shall be invested as provided by section 36D of this Act and any investments made from such common fund shall not be made on account of or belong to any particular estate or trust.

Common fund. cf. Public Trust Office Act, 1908 (N.Z.); s. 32.

Subject to this Act the interest earned by such investments shall be paid into the common fund.

(2) The interest payable to the respective estates or trusts, the moneys of which form the common fund, shall be at a rate to be from time to time determined by the Governor and such rate of interest shall be credited to the respective estates or trusts 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.

36B. (1) Moneys expressly directed to be invested otherwise than as mentioned in section 36A of this Act shall not form part of the common fund, and the public trustee may invest such moneys in accordance with such direction; such investments shall not be entitled to the protection afforded by this Act to the common fund but shall be entitled to the protection afforded by section thirty-seven of this Act:

Special investments outside the common fund. cf. *Ibid.* s. 33.

Provided

Provided that the inclusion in any deed, will or other trust instrument of clauses directing or empowering the investment of moneys in forms of investment other than the common fund shall not of itself be deemed to be a direction not to invest in the common fund.

(2) Forthwith upon the receipt by the public trustee of any such moneys, he shall make all reasonable efforts to find an investment or investments therefor in accordance with the special directions contained in the trust instrument, and, if the whole of such moneys cannot be so invested within one calendar month from the date of receipt thereof, the public trustee may, until such moneys can be so invested temporarily appropriate and allocate as an investment for such moneys, or any part thereof, one or more existing investments of the common fund of the same nature and kind as is directed by the trust instrument.

(3) Any common fund investment while so appropriated and allocated as a special investment shall not be entitled to the protection afforded by this Act to common fund investments.

36c. If the common fund is insufficient to meet the lawful claims thereon, the Colonial Treasurer shall, without further appropriation than this Act, pay such sums out of the Consolidated Revenue Fund as may be necessary to meet the deficiency.

Common fund to be made good out of consolidated Revenue Fund. cf. Public Trust Office Act, 1908 (N.Z.), s. 35 (1).

36d. The public trustee may invest the common fund in any of the investments in which, under the Trustee Act, 1925, as amended by subsequent Acts, trustees are authorised to invest trust funds, and also in any class of investment from time to time approved, for the purposes of this Act, by the Governor.

Manner of investment of common fund. cf. Public Curator Act, 1915 (Q'land), s. 18 (2).

36E. The public trustee may invest capital moneys (whether of the common fund or not) in advances by way of sub-mortgage of a first mortgage of any real estate held in fee simple in New South Wales subject to the conditions following:—

Power to make advances on sub-mortgage of a first mortgage.

- (a) that the head mortgage is not otherwise encumbered or charged and is a security for the amount owing thereon within the requirements and provisions of the law for the time being relating to investments by the public trustee;
- (b) that the amount advanced on the security of such sub-mortgage does not exceed three-fourth parts of the sum then owing on and secured by the head mortgage.

36F. (1) In order to admit of the moneys in the common fund being kept closely invested, or to provide moneys wherewith to make advances in connection with estates, the public trustee may, with the approval of the Minister in each case, obtain advances from the Colonial Treasurer or the bank at which the public trustee's account is kept, by hypothecating securities held by him in respect of investments of the common fund.

Temporary advances to public trustee. cf. Public Trust Office Amendment Act, 1912 (N.Z.), s. 3.

(2) Every such advance shall be for such period, not exceeding four months, and at such rate of interest as shall be approved by the Minister:

Provided that on the expiration of the said period the advance may be renewed for the same or any shorter period, and so on from time to time as shall be approved by the Minister on each occasion.

(3) The total amount of advances to the public trustee under this section outstanding at any one time shall not exceed one hundred thousand pounds.

36g. (1) The public trustee may retain investments belonging to any trust or estate in any investment authorised by the trust instrument or (save as otherwise provided by that instrument) authorised by law, and may (save as so provided) retain any investment authorised by law existing at the date of the commencement of the trust, or (where the trust arises on an intestacy) at the date of the death of the intestate:

Power to retain investments.
cf. Public Curator Act, 1915 (Q'land), s. 18 (3).

Provided that any investments so retained shall not form part of the common fund unless they are of the class of investment upon which the moneys of the common fund may be invested and the public trustee determines that they shall become part of the common fund.

(2) The public trustee is hereby empowered to make any such determination except where the trust instrument expressly forbids investment in the common fund.

36H. The public trustee may in investing moneys by way of mortgage provide that the loan with interest thereon shall be repaid to the public trustee by periodical instalments extending over such period, and subject to such terms and conditions as the public trustee shall think fit.

Mortgage may provide for repayment by instalments.

8. The Principal Act is further amended—

Further amendment of Act No. 19, 1913.

(a) by inserting at the end of section thirty-eight the following new subsection:—

Sec. 38.
(Moneys in public trustee's account to be Crown property.)

(2) Notwithstanding the foregoing provision of this section money in the account of the public trustee shall be liable to be attached in the same manner as if the public trustee were a private trustee.

(b) (i) by inserting in section forty-four after the words "probate or administration" where firstly occurring the words "or files an election";

Sec. 44.
(Acts of public trustee deemed to be bona fide.)

(ii)

- (ii) by inserting in the same section after the words "probate or administration" where secondly occurring the words "or has filed an election";
- (iii) by inserting at the end of the same section the words " The protection afforded to the public trustee by this section shall be in addition to any protection afforded to him by the Principal Act or any other Act ";
- (c) by inserting in section forty-eight after the word "servant" the word "agent"; Sec. 48, (Remedy against public trustee.)
- (d) by inserting next after section fifty-seven the following new section:— New sec. 57A.

57A. Where the public trustee is the trustee, executor or administrator of an estate or is otherwise authorised to act under this Act, or under section forty-seven of the Trustee Act, 1925, as amended by subsequent Acts, and whether appointed or authorised to act before or after the commencement of the Public Trustee (Amendment) Act, 1933, the provisions of sections ninety-two and ninety-three of the Wills, Probate and Administration Act, 1898-1932, and of section sixty of the Trustee Act, 1925, as so amended, shall extend to and bind and shall be deemed always to have extended to and to have bound the persons beneficially interested in such estates: Provided that the public trustee shall be deemed not to have notice of the claim of any such person if the public trustee has made such inquiries for such person as he considers reasonable and has published such notices as are required by the provisions of those sections.

9. The Principal Act is further amended— Further amendment of Act No. 19, 1913.

- (a) (i) by inserting at the end of paragraph (b) of section fifty-nine the words "and of the agents of the public trustee "; Sec. 59. (Regulations.)
- (ii)

(ii) by omitting paragraph (d) of the same section and by inserting in lieu thereof the following new paragraph:—

(d) for fixing scales of commission, fees, costs, and other charges to be made, charged or retained by the public trustee under this Act or for work done and services rendered under this Act or the Local Government Act or any other Act, and to determine how the same are to be borne and paid and empowering the public trustee in cases in which he is of opinion that the circumstances so require to reduce or remit such commission, fees, costs and charges or any of them;

(iii) by omitting paragraph (g) of the same section and by inserting in lieu thereof the following new paragraph:—

(g) for determining in what securities if any additional to those authorised by the Trustee Act, 1925, as amended by subsequent Acts, moneys of the common fund and of estates outside the common fund (when the trust instrument does not expressly limit the range of investments) may be invested;

(iv) by inserting in paragraph (j) of the same section after the word "necessary" the words "or desirable";

(v) by omitting from the same section all words after the words "administration of this Act" and by inserting next after the paragraph (j) the following new paragraphs and subsection:—

(k) for fixing the maximum fees, charges and remuneration which may be allowed by the public trustee to his agents;

(l)

- (1) for allowing an average rate of interest on all or any of the moneys lying to credit uninvested of estates in the hands of the public trustee and for fixing the method of assessing such average rate of interest and the period or periods during which such average rate of interest shall remain in force;
 - (m) for the determination of all matters in relation to the common fund, including the ascertainment and fixation of the rate of interest to be allowed on the moneys of the estates comprised therein, the establishment and investment of reserves and the application of such reserves and of any surplus interest earned by the common fund;
 - (n) with regard to reciprocal arrangements with the Public Curator or Public Trustee of any other State or the Dominion of New Zealand and for reducing or remitting any commission, fees, costs and other charges of the public trustee in any such cases.
- (2) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of such publication or from a later date to be specified in the regulations;
 - (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

10. (1) The Stamp Duties Act, 1920-1932, as amended by the Stamp Duties (Amendment) Act, 1932, is amended by inserting in paragraph (a) of subsection five of section one hundred and twenty-two after the words "public trustee" the words "either alone or jointly with any other person."

Amendment of Stamp Duties Act, 1920-1932, Sec. 122. (No dealings with shares, etc., of deceased persons to be registered without certificate of commissioner.)

(2) The Administration Amending Act, 1906, is amended by omitting section five.

Amendment of Act No.14, 1906. (Revision.)

11. (1) The regulations made under the Public Trustee Act, 1913, as amended by subsequent Acts and published in the Government Gazette No. 1 of the third day of January, one thousand nine hundred and thirty, shall be deemed to have been validly made.

Validation.

(2) Such regulations may be amended from time to time, or repealed by the Governor, by regulations made under the Public Trustee Act, 1913-1933.

