

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1933.

A BILL

To amend the law respecting the custody and investment of money paid into the Supreme Court and the security and management of the moneys and effects of suitors in that court.

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 "Supreme Court Funds Act, 1933."

Short title and commencement.

(2) This Act shall, except as regards the making of rules and regulations, commence upon a day to be appointed by the Governor and notified by proclamation in the Gazette.

(3) As to the making of rules and regulations this Act shall come into operation on the date upon which the assent of His Majesty to this Act is signified.

Interpre-
tation.
15 and 16
Geo. V, c. 49,
s. 149.

2. In this Act unless the context or subject matter otherwise indicates or requires—

“ Court ” means the Supreme Court.

“ Dividends ” includes interest or other periodical produce.

“ Funds ” and “ funds in court ” mean any money securities or effects or any part thereof, standing to be placed to the account or credit of the Treasurer for and on behalf of the court in the books of the bank.

“ Government securities ” include stocks, funds, bonds, debentures and Treasury bills of the Government of New South Wales or the Commonwealth of Australia.

“ Money in court ” means any sum of money paid into the bank with the privity of the Treasurer for and on behalf of the court or placed to the credit of any cause, matter or account in court, and includes dividends on securities in court and interest on money on deposit.

“ Order of the court ” means any such order, decree, report, certificate or direction of the court in any of its civil jurisdictions, or any judge or officer thereof, as may be prescribed by the rules.

“ Securities ” includes Government securities, and any security of any foreign state, of any part of His Majesty’s Dominions outside New South Wales or of any body corporate or company, or any securities standing in books kept by any person in New South Wales and all stock funds and effects.

“ Securities in court ” means any securities standing or deposited in the name or to the credit or account of the Treasurer for and on behalf of the Court, or placed to the credit of a cause, matter or account in court.

“ State

“ State Debt Commissioners ” means the Board of Commissioners constituted by the State Debt and Sinking Fund Act, 1904.

“ The Bank ” means the bank in which the account of the Treasurer under this Act is kept by direction of the Treasurer under section eighteen of the Audit Act, 1902.

“ The Rules ” means the rules made under this Act.

3. (1) There shall be an Accountant-General of, and one accounting department of the court. Pay office. 15 and 16 Geo. V, c. 49, s. 133 (1).
(2) The Colonial Treasurer (in this Act referred to as “the Treasurer”) shall be the Accountant-General of the court.

4. All securities and money which at the commencement of this Act are standing in the bank to the credit of the Colonial Treasurer’s Prothonotary, Master in Equity, Master in Lunacy, Registrar of Probate, Registrar in Matrimonial Causes Account, and all securities in court at the commencement of this Act, and all securities and money which at any time after such commencement shall be transferred or paid into or deposited in court to the credit of any cause, matter, or account, shall be vested in the Treasurer on behalf of the court, and shall continue to be and be subject to the provisions of this Act and to the rules. Funds in court. Ibid. s. 133 (4).

5. The Treasurer may do any act, sign or execute any instrument, and exercise any authority required or authorised to be done, signed, executed or exercised by him for the purposes of this Act or of the rules, by a deputy appointed by him in writing under his hand. Officer may be appointed to act for Treasurer. Ibid. s. 133 (5).

6. (1) The Consolidated Revenue Fund shall be liable to make good to the suitors of the court all funds in court whether the same have been paid, transferred or deposited into or in court before or after the commencement of this Act. Liability of Consolidated Revenue Fund for default of Treasurer. Ibid. s. 134.

(2) If the Chief Justice whether on a representation made to him by any suitor or without any such representation certifies to the Governor in writing that the Treasurer has failed to pay any money in court, or transfer

transfer or deliver any securities in court, required by any order of the court to be paid, transferred or delivered from his account, or has been guilty of any default with respect to any such money or securities, the Governor may cause to be paid out of the Consolidated Revenue Fund to the credit of the Treasurer for and on behalf of the court such sum as may be certified by the Chief Justice in writing to be required for the purpose of paying the money so required to be paid, or of replacing the securities so required to be transferred or delivered or of making good such default.

Pay Office for Supreme Court. 15 and 16 Geo. V, c. 49, s. 136.

7. The Treasurer shall cause to be kept in or near the court an office for the purpose of carrying on the business of the Treasurer under this Act.

Vesting of property in Treasurer. Ibid. s. 137.

8. All funds in court in pursuance of this Act shall vest in the Treasurer for and on behalf of the court without any conveyance, assignment or transfer, notwithstanding the death or removal from office of the person who is Treasurer, and shall be held by him in trust to attend the orders of the court and subject to the rules, and all acts done by the Treasurer with reference to any such funds in pursuance of an order of the court shall be valid and effectual.

Transfer of securities and receipt of dividends. Ibid. s. 138.

9. (1) All securities transferred, standing or deposited into, in or to the account of the Treasurer in pursuance of this Act, shall be held by him in trust in the several causes and matters in which those securities are transferred, standing or deposited respectively, and shall not be transferred, sold or delivered out except in pursuance of an order of the court.

(2) The rules may determine what evidence of an order of the court and of the directions contained in the order shall be necessary and sufficient for authorising the bank or any other person to transfer on sale or otherwise or deliver out any securities or other things standing in the books of or deposited with the bank or that person to the credit or account of the Treasurer, and the securities or things so directed to be transferred or delivered out shall be transferred or delivered out accordingly on behalf of the Treasurer by some officer of the bank or that person.

(3)

(3) The bank shall, by one of their cashiers or some other proper officer, receive all dividends accruing due on all securities standing to the account of the Treasurer for and on behalf of the court, of which a certificate has been sent to them by him, and shall also receive any principal money payable in respect of any such securities, and the said certificate shall be a sufficient authority to the bank to receive the dividends and principal money.

(4) Any receipt given by the bank or by any cashier or other proper officer of the bank for any dividends on any securities standing to the account of the Treasurer under this Act, or any principal money payable in respect of any such securities, shall be a good discharge for those dividends or that money.

(5) The bank shall place all money received by them in pursuance of this section to the credit of the Treasurer for and on behalf of the court.

10. Section sixty-five of the Commonwealth Bills of Exchange Act, 1909-1912 (which relates to the indorsement of drafts or orders drawn upon bankers for the payment of money), shall extend to any document issued by the Treasurer in pursuance of this Act which authorises the payment of money.

Application of s. 65 of C'with Bills of Exchange Act, 1909-1912; 15 and 16 Geo. V, c. 49, s. 139.

11. Nothing in this Act shall be deemed to require the bank to keep the account of the Treasurer for and on behalf of the court causewise, and the bank are hereby indemnified for all acts and things done or permitted to be done in pursuance of this Act or of the rules or of any order of the court made or purporting to be made in pursuance of this Act or of any such rule, or done or permitted to be done in pursuance of any certificate signed and countersigned as directed by this Act or the rules, and no such acts or things respectively shall be questioned in any court to the detriment of the bank.

Accountant. Indemnity to Bank. *Ibid.* s. 140.

12. (1) Save as otherwise provided by the rules all money in court shall, subject to the provisions of this Act and of the rules, be placed on deposit without any application or request for that purpose, and when so placed on deposit shall bear interest at the rate of two per cent. per annum together with any income-tax chargeable thereon.

Establishment of suitors' deposit account. *Ibid.* s. 141.

(2) Any money which may at any time be standing to the credit of the Treasurer for and on behalf of the Court beyond the amount which the Treasurer considers to be required for meeting current demands shall be placed in the hands of the State Debt Commissioners, who shall pay to the credit of the Treasurer for and on behalf of the Court such sum as, with such money as is at the time standing to his credit, may be certified by him to be required to meet current demands, and the Consolidated Revenue Fund shall be liable to make good all money so placed in the hands of the Commissioners and the interest payable on sums placed on deposit in like manner as it is liable to make good money in court.

Saving for investments made under order of court.
15 and 16 Geo. V, c. 49, s. 142.

13. Any money in court which under the rules or under rules of court or under an order of the court is required to be laid out in any particular investment shall, subject to the rules, be so laid out notwithstanding anything in this Act.

Validity of payments, etc., pursuant to rules of court.
Ibid. s. 143.

14. All acts done by the Treasurer with reference to funds in court pursuant to and in accordance with rules of court shall be as valid and effectual as if they had been done in pursuance of an order of the court.

Remittances by post.
Ibid. s. 144.

15. Where by the rules or any regulations of the Treasury the Treasurer is authorised to make payments of money to persons entitled thereto upon their request by transmitting to them by post crossed cheques or other documents intended to enable them to obtain payment of the sums expressed therein, the posting of a letter containing the cheque or document and addressed to the person entitled thereto at the address given by him in his request shall, as respects the liability of the Treasurer and of the Consolidated Revenue Fund respectively, be equivalent to the delivery of the cheque or document to that person himself.

Application of money in hands of State Debt Commissioners.
Ibid. s. 145.

16. (1) The State Debt Commissioners shall, subject to the directions of the Treasurer from time to time invest all money placed in their hands in pursuance of this Act in Government securities, and shall out of the dividends on the securities purchased with that money and on the securities, if any, purchased with the accumulation of those dividends, pay the sums payable by them under

under this Act, and invest any residue thereof in Government securities, and may from time to time change any such securities into Government securities of another description of equivalent value.

(2) If at any time the money in the hands of the State Debt Commissioners under this Act is insufficient to pay the amount payable by them in pursuance of this Act, the Governor shall either direct the Commissioners to realise a sufficient portion of the securities so purchased as aforesaid and apply the proceeds of such realisation in paying the amount so payable by them, or cause the required sum to be issued to the Commissioners out of any money applicable to the sinking fund, or out of the Consolidated Revenue Fund or the growing produce thereof.

17. (1) The Chief Justice, with the concurrence of the Treasurer, may make rules for carrying this Act into effect and regulating the deposit, payment, delivery and transfer in, into and out of court of money and securities which belong to suitors or are otherwise capable of being deposited in or paid or transferred into court, or in or into the bank with the privity of the Treasurer, or are under the custody of the court, and the evidence of such deposit, payment, delivery or transfer, and the investment of and other dealing with money and securities in court in pursuance of the orders of the court, and the execution of the orders of the court, and the powers and duties of the Treasurer with reference to such money and securities, and in particular for—

Power to make rules. 15 and 16 Geo. V, c. 49, s. 146.

- (a) regulating the mode in which the Treasurer is to deal with money and securities in pursuance of the orders of the court, and the mode in which effect is to be given to an order of the court which is to be executed by or through the office of the Treasurer, and generally the arrangements between that office and the court and the officers thereof, and the certificates and information to be given by the Treasurer with reference to the business of the court;

(b) .

Supreme Court Funds.

- (b) regulating the deposit, payment, sale transfer and delivery with, to and by the Treasurer of the funds, and the proceedings, evidence and duties of persons in relation thereto;
- (c) determining the mode of ascertaining the value of Government securities transferred to the State Debt Commissioners, or otherwise ordered to be dealt with by the Treasurer;
- (d) regulating the investment in securities of money in court and the conversion into money of securities in court, and the transfer to the State Debt Commissioners of Government securities ordered by the court to be sold or converted into cash, and the transfer by the Commissioners to the Treasurer for and on behalf of the court of Government securities ordered by the court to be purchased;
- (e) regulating the placing on and withdrawal from deposit of money in court, and the payment or crediting of interest on money placed on deposit;
- (f) determining the smallest amount which is to be invested in securities, unless directed to be so invested notwithstanding the smallness of the amount, and determining the smallest amount which is to be placed or remain on deposit and the smallest amount of money on deposit on which interest in pursuance of this Act is to be credited to an account to which money placed on deposit belongs;
- (g) determining the smallest amount which shall, notwithstanding any order of the court, be paid by the Treasurer:

Provided that—

- (i) no rules made in pursuance of this paragraph shall apply to any periodical payments of annuities, or of dividends or interest on funds in court;
- (ii) the amount determined under this paragraph shall not exceed one shilling; and

(iii)

- (iii) any sums retained by the Treasurer in accordance with any rule made under this paragraph shall, in such manner as the Treasurer may direct, be either paid into the Consolidated Revenue Fund or applied as an appropriation in aid of the moneys granted by Parliament for the expenses of the court;
- (h) determining the time at which money in court is to be placed on deposit, and at which interest on money so placed on deposit is to begin and cease, and the mode of computing any such interest;
- (i) determining the cases in which interest on money placed on deposit, and the dividends on any securities standing to the account of the Treasurer for and on behalf of the court is or are to be placed on deposit;
- (k) dealing with—
 - (a) accounts on which the balance of money and securities together amounts to less than five pounds;
 - (b) accounts on which that balance amounts to five pounds or more, but less than fifty pounds, and which have not been dealt with for a period of five years;
 - (c) accounts on which that balance amounts to fifty pounds or more and which have not been dealt with for a period of fifteen years;
 and providing for the publication of lists of all or any of such last-mentioned accounts;
- (l) regulating the mode of framing and expressing orders of the court and instruments and proceedings of the Treasurer with reference to the business of the court.

(2) Every rule made in pursuance of this section shall be laid before Parliament and every rule purporting to be so made shall be deemed to have been duly made and to have been within the powers of this Act.

Rules of Court to be laid before Parliament.

18. When rules are made under this Act—

- (a) The rules or a notification thereof shall be published in the Gazette.
- (b) The rules shall take effect from the date of the publication or from a later date to be specified in the rules.
- (c) The rules shall 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.
- (d) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before the House disallowing any rule or part thereof, that rule or part shall thereupon cease to have effect.

Regulations as to stockbroker. 15 and 16 Geo. V, c. 49, s. 147.

19. The Treasury may make regulations with respect to the stockbroker to be employed in transacting the business relating to the funds vested in the Treasurer for and on behalf of the court, and the amount of commission to be received by him, or his payment by salary or otherwise.

Accounts of funds in court. Ibid. s. 148.

20. (1) Accounts in such form as the Treasury may direct, including all such accounts as may be necessary for carrying into effect the orders of the court, shall be kept for the purposes of this Act, and separate accounts shall be kept for the transactions under this Act of the Treasurer and of the State Debt Commissioners and of the liability of the Consolidated Revenue Fund under this Act.

(2) The accounts to be kept under this section shall be examined by the Auditor-General, and the Treasurer shall cause copies of the accounts certified by the Auditor-General, together with his report thereon, to be sent to the Chief Justice, and to be laid before both Houses of Parliament.

