

Public Trustee (Amendment) Bill.

MEMORANDUM.

THIS is a Bill to amend the Public Trustee Act, 1913.

It confers the following additional powers on the Public Trustee:—

To act as manager of the estates of incapable persons, and to accept charitable trusts and estates apparently insolvent which, by the Principal Act, he was precluded from administering.

To accept appointment without the necessity of an application in Equity.

To exercise power of sale without the present restriction.

To accept election as administrator in small estates (following provision now in force in New Zealand and Queensland).

To apply certain unclaimed funds in the hands of the Treasurer for the acquisition of a site, and the building thereon of offices for the Public Trustee.

The sections repealed will be rendered unnecessary by the amendments in Clause 2 of the Bill.

The Bill also contains an amendment of the Public Service Act, 1902, with the object of raising the status of the Public Trustee to accord with the greater powers now conferred, and placing him among those officers who are not subject to the Public Service Board.

No. , 1922.

A BILL

To confer additional powers on the Public Trustee; to amend the Public Trustee Act, 1913, and certain other Acts; and for purposes consequent thereon and incidental thereto.

[MR. LEY;—13 September, 1922.]

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. This Act may be cited as the "Public Trustee Short title.
(Amendment) Act, 1922."

- Amendments to Public Trustee Act. Sec. 6 (1) and (2).
- 2.** The Public Trustee Act, 1913, is amended as follows:—
- (1) Section six by the omission of subsections one and two and the substitution therefor of the following new subsections:—
- (1) The Governor may appoint a deputy public trustee, whose duties shall be those prescribed by the Governor or directed by the public trustee. 5
- (2) During the illness, absence, or suspension from duty of the public trustee such deputy shall have the powers, duties, and liabilities of, and be entitled to the same rights and immunities as the public trustee. 10
- Sec. 10 (1). (2) Subsection one of section ten by the omission of the words "under an order to collect." 15
- Sec. 12 (1) (3) and (4). (3) Subsection one of section twelve by the addition at the end thereof of the following: "(v) as committee, manager, guardian, or receiver of the estate of an insane patient or an insane or incapable person within the meaning of the Lunacy Act of 1898"; subsection three by the omission of the words "as executor, administrator, agent, or attorney" and the substitution therefor of the words "in any of the capacities specified in subsection one"; and subsection four by the omission of the words "or charitable" and of all words after the word "purposes." 20
- Sec. 13 (1) (2) and (3). (4) Section thirteen by the omission of the proviso to subsection one; the omission from subsection two of all words after the words "to the contrary"; and the repeal of subsection three. 30
- Sec. 16 (1) and (2). (5) Section sixteen, subsection one, by the omission of the words "under any order of the said court"; and subsection two, by the omission of the words "sections thirteen and fourteen" and the substitution therefor of the words "section thirteen." 35
- Sec. 17. (6) Section seventeen by the omission of the words "said court" and the substitution therefor of the words "Supreme Court in its equitable jurisdiction." 40
- (7)

- 5 (7) Section twenty-three, subsection one, by the omission of the word "collect" and the substitution therefor of the word "administer"; and subsection two, by the omission of the words "an order to collect the estate of such person" and the substitution therefor of the words "a grant of probate or letters of administration." Sec 23 (1) and (2).
- 10 (8) Section thirty-five, subsection two, by the omission from paragraph (n) of the words "two hundred and fifty" and the substitution therefor of the words "five hundred"; and by the addition at the end of paragraph (n) and at the end of paragraph (p) of the words "except for purposes of administration under Part XV of the Conveyancing Act, 1919." Sec. 35.
- 15 (9) Section forty-nine by the omission of the words "trustee, executor, administrator, agent, or attorney" and the substitution therefor of the words "in any of the capacities specified in subsection one of section twelve." Sec. 49.
- 20 (10) Sections fourteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-four, twenty-five, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two are repealed. Repealed sections.
- 25 **3.** The following section is inserted next after section eighteen of the said Act :— New section after s. 18.
- 30 18A. (1) Where any person has heretofore died or hereafter dies testate, in or out of New South Wales, leaving property the gross value of which, as estimated by the public trustee, does not at the time of the election, hereinafter mentioned, exceed four hundred pounds, and no person has obtained probate, the public trustee may, in all cases where he is entitled to obtain probate, in lieu of obtaining probate, file in the office of the Supreme Court an election under his hand and seal setting forth the name, residence, and occupation (as far as then known to the public trustee) of the testator at the date of his death, and the property forming his estate and the date of his death as then known to the public trustee, and stating that, after due inquiries, he believes Election by public trustee to administer. cf. N.Z. 1913, No. 19, s. 18(1).
- 35 that
- 40 that

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 electing to administer the property according to the provisions thereof. 5

(2) When any person has heretofore died or hereafter dies intestate, in or out of New South Wales, leaving property the gross value of which, as estimated by the public trustee, does not at the time of the election hereinafter mentioned exceed 10 four hundred pounds, and no person has taken out letters of administration, the public trustee may, in all cases where he is entitled to take out letters of administration, and in lieu of taking out such letters, file in the office of the Supreme Court an 15 election under his hand and seal setting forth the name, residence and occupation (so far as then known to the public trustee) of the intestate at the date of his death, and the property forming his estate, and the date of his death, as then known to 20 the public trustee, and electing to administer such estate.

(3) On such election being filed the public trustee shall be deemed to be executor or administrator (as the case may be) in like manner 25 in all respects as if probate or letters of administration had been duly granted to him.

(4) The public trustee shall publish in the Gazette, and in one daily newspaper published in Sydney, and if the deceased resided more than 30 thirty miles from Sydney, in the paper circulating in the district where he resided at the time of his death, a notice that he has made such an election, and such notice shall be conclusive evidence that the public trustee is rightfully entitled to 35 administer under this section.

(5) If after filing such election the gross value of the property to be administered is found to exceed the sum of six hundred pounds, the public trustee shall, as soon as practicable thereafter, file 40 in

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.

5 (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.

4. The following new sections are inserted next after New sections.
10 section fifty-three of the said Act :—

53A. The Minister for Public Works is hereby Moneys paid to trust account. authorised to expend the whole of the moneys so paid into the Treasury and carried to such special trust account, or such portion thereof as may be
15 necessary, in the acquisition of a suitable piece of land and the erection thereon and equipment of a suitable building for the purposes of the public trust office.

53B. Such work shall be deemed to be a duly Application of Public Works Act, 1912. authorised work within the meaning of the Public Works Act, 1912, but the provisions of sections
20 thirty-four, thirty-five, thirty-six, and thirty-seven of that Act shall not apply to the said work. The provisions of section thirty-eight of the said Act
25 shall apply to any contracts for carrying out such work.

53c. Upon the completion of the said building Vesting of land and building in public trustee. the said land and building shall pass to and become vested in the public trustee.

30 53d. The cost of acquiring the said land and carrying out the said work, together with interest Recoupment of cost to special trust account. thereon, shall be recouped to the special trust account in manner following :—

35 (1) The total cost, subject to such partial remission as the Governor may think just under any special circumstances, together with interest thereon at the rate of *four* pounds per centum per annum on the sums making up such
40 total cost calculated from the time such sums were expended, shall be certified as soon as practicable under the hand of the
22—B said

said Minister, and the total amount so certified shall, upon the notification of such certificate to the public trustee, become and be a debt charged upon the said land and building, and the revenues from whatever 5. sources received by the public trustee by virtue of his office, until defrayed as hereinafter provided.

- (2) As soon as possible after the said Minister has certified the total amount as aforesaid, 10 the Governor shall fix a period not exceeding *fifty* years, within which such amount shall be liquidated by the payment of such annual sums as shall after the last of such payments extinguish the whole amount of 15 such cost with interest at the rate of *four* pounds per centum per annum on the balance unpaid in each year; and in fixing such period the Governor may take into consideration the nature and durability of 20 the said building. Such period and the amount of such annual sums when so fixed shall be notified forthwith to the public trustee.
- (3) The first of such payments shall be made 25 within one year from the date of such notification, and each subsequent payment at or before the end of one year from the expiration of the time limited for making the last preceding payment. 30
- (4) At the end of the period so fixed and notified, and after the last payment has been made, the said land and building and the revenues of the said public trust office, from whatever sources derived, shall be discharged from any 35 further payments under this section.

Amendment
of Public
Service Act,
1902.
Sec. 5.

5. The Public Service Act, 1902, is amended by inserting in section five after the word "lunacy" the words "the Public Trustee."