



ANNO QUADRAGESIMO TERTIO ET QUADRAGESIMO QUARTO

VICTORIÆ REGINÆ.

A.D. 1880.

No. 188.

An Act to establish the Office of Public Trustee, and for other purposes.

[Assented to, October 28th, 1880.]

WHEREAS it is expedient that a public trustee should be appointed, with the powers and duties hereinafter provided—
Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

Preamble.

1. This Act may be cited, for all purposes, as the “Public Trustee Act, 1880,” and shall come into operation on a day to be fixed by the Governor by Proclamation to be published in the *Government Gazette*.

Short title, and commencement.

2. In this Act, unless inconsistent with the context—

Interpretation.

“Judge” shall mean Judge of the Supreme Court of South Australia:

“Administrator” shall mean any person to whom letters of administration of the estate and effects of a deceased person shall have been granted by the Supreme Court, whether with or without the will annexed, and whether for general, special, or limited purposes.

3. The Governor may appoint an officer, to be designated the “Public Trustee,” who shall have and perform the powers, immunities,

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nities, and duties hereinafter provided; and the Governor may also appoint such officers and clerks as he shall think fit to assist the Public Trustee in the performance of his duties.

Incorporation of
Public Trustee.

4. The Public Trustee, and his successors in office, shall be, and he and they are hereby constituted, a body corporate under the name and title of "Public Trustee," and shall by that name be capable of exercising all the functions of an incorporated body, and shall have by that name perpetual succession and a seal, and may by that name sue and be sued, plead and be impleaded in all Courts and before all Justices of the Peace and others.

Seal.

The seal of the Public Trustee shall be attached to all documents executed by him.

Public Trustee to be
under control of
Governor, and to
give security.

5. The Public Trustee shall be subject to the general control and supervision of the Governor, and shall, before entering upon the duties of his office, give security to the satisfaction of the Governor for the collection and due payment of, and accounting for all real and personal property which shall come to his hands, or become vested in him by virtue of his office.

Public Trustee in-
capable of acting as
trustee for persons
and property not
under this Act.

6. The Public Trustee shall be incapable of becoming the trustee, guardian, committee, administrator, executor, agent, or attorney of any person or persons in respect of any property otherwise than as Public Trustee under this Act.

Administrators to pay
over the money, and
deliver property to
Public Trustee.

7. Every administrator who shall have in his possession, or under his control, any moneys or property, or be seized of any real estate belonging to any person not *sui juris*, or not resident in the said province, or not having any duly authorised agent or attorney therein, shall pay over and deliver such moneys or property, and convey or transfer such real estate, to the Public Trustee immediately after the expiration of one year from the date of the death of the intestate or testator, or within six months after such sooner time as the said real and personal estate shall have been sold, realised, collected, or got in, or such portion thereof as shall be available for sale, realisation, or collection. And the Public Trustee shall then administer such real and personal estate according to law, and in accordance with the direction contained in any will or codicil affecting such real or personal estate or any part of it.

Statements as to
nature and course of
distribution of estates
to be delivered.

8. Every administrator shall, within six months from the date of obtaining letters of administration, deliver at the office of the Public Trustee a statement of the nature and value of the real and personal estate under administration, and the debts and liabilities thereof, and the names, addresses, and description of all persons entitled to any of the property under administration, and such statement shall be verified by the statutory declaration of the administrator.

As to default in
delivering statement.

If any administrator shall fail to deliver such statement within
the

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the time appointed, the Public Trustee may issue a summons requiring such administrator to appear before a Judge and shew cause why such statement should not be forthwith delivered as aforesaid, and why a penalty should not be inflicted upon such administrator for his default in compliance with the provisions of this section, and upon the return of such summons the Judge before whom the same shall be heard may make an order for the delivery of such statement within a certain time, or such other order as shall be just, and may also order such administrator to pay the Public Trustee any fine that the Judge may think proper, not exceeding Fifty Pounds, and also the costs of the application.

9. From after the coming into operation of this Act the office of "Curator of Intestate Estates" constituted by the "Testamentary Causes Act, 1867," shall cease to exist, and the powers, immunities, and duties now vested in, possessed, and exercised by the Curator of Intestate Estates shall thenceforth be vested in, possessed, and exercised by the Public Trustee; and all real and personal estate then vested in and possessed by the Curator of Intestate Estates shall thenceforth be vested in and possessed by the Public Trustee: And from and after the period aforesaid wherever the expression "Curator of Intestate Estates" shall occur in any Act, document, deed, or instrument the same shall be read and construed as if the expression Public Trustee were substituted therefor.

Curator of Intestate Estates abolished, and Public Trustee substituted.

10. In cases where, in the opinion of a Judge, arrived at upon such evidence as he shall deem sufficient, any person shall have died insolvent or a creditor of any deceased person would be entitled to obtain letters of administration of such deceased person's estate or to institute a suit for the distribution of the assets of such person's estate, such Judge may on the application of the Public Trustee, or any other person, *ex parte*, or otherwise, order that letters of administration (either with or without the will annexed) be granted to the Public Trustee; or if probate or letters of administration in respect of such estate shall then have been granted to any other person, the Judge may order that such probate or letters of administration be revoked, and upon the making of such order such probate or letters of administration shall become void; but without prejudice to the validity of any proceedings which may have been taken, or act done under the same.

In cases of person dying insolvent, Public Trustee to be appointed administrator.

It shall not be necessary for the Public Trustee, upon the granting of such letters of administration, to enter into any bond or security for the due administration of the estate.

No security need be given by Public Trustee.

The Public Trustee, when appointed administrator under this section, shall administer the estate in the same manner as the estate would have been administered for the benefit of creditors under a decree or order of the Supreme Court, and the Public Trustee shall have power of sale of real estate, subject to the approval of the Board of Advice, notwithstanding that the same may be devised without being charged with the payment of debts.

Mode of administration.

After

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No proceedings to be taken after appointment.

After the Public Trustee shall have been appointed administrator as aforesaid, no person shall institute any action, suit, or proceeding for the recovery of any money due to such person by the estate of the deceased person, or for the distribution of the assets of the estate, and any such action, suit, or proceeding which shall have been commenced shall forthwith abate.

Supreme Court may appoint Public Trustee to be trustee, guardian, or committee.

11. The Supreme Court may, in any case in which it might appoint a trustee or guardian of any property or a committee of any lunatic's estate, appoint the Public Trustee to be such trustee or guardian or committee: Provided that before such appointment be made the proposal to make such appointment shall be submitted to and approved of by the Board of Advice, and, upon such appointment being made the property of which the Public Trustee is appointed to be trustee, guardian, or committee shall be deemed to be vested in him as such Public Trustee.

After approval of Board of Advice.

Duties of Public Trustee in regard to making inquiries.

12. It shall be the duty of the Public Trustee to require administrators and other persons to pay and deliver to him all moneys and property, and convey and transfer to him all real estate, to which he shall become entitled under the provisions hereof; and for the purpose of ascertaining whether any administrator, or other person, is in possession or has the control of any money or property, or is seized of any real estate which should be so paid, delivered, conveyed, or transferred, the Public Trustee may institute such inquiries as he shall think proper for the purpose of ascertaining the particulars of estates under administration and held in trust, and may, by summons under his hand in the form or to the effect contained in the First Schedule hereto, require any administrator or other person to appear before him, and answer all questions that he may put to such administrator or other person with reference to any estate: Provided that the Public Trustee shall pay or tender to the person so summoned the same amount as such person would have been entitled to had he been summoned as a witness to the Supreme Court.

Penalty on failure to attend.

Any administrator or other person who, after receiving such summons, shall fail to attend at the time and place mentioned therein, or who shall neglect to truly answer the questions put to him by or on behalf of the Public Trustee, shall forfeit and pay a penalty not exceeding Ten Pounds for each offence.

Power to summon administrator, or other person before Judge.

13. If any administrator or other person shall fail to pay over and deliver to the Public Trustee all moneys and property, and convey and transfer to the Public Trustee all real estate to which the Public Trustee is entitled under the provisions hereof, or if the procedure in the last section provided shall fail to elicit the particulars required, the Public Trustee may issue a summons requiring any administrator, or any other person who may be in possession of such money or property, or seized of such real estate, or who may be supposed to be in possession of information

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tion relevant to the matter under investigation, to appear before a Judge of the Supreme Court, at a time and place to be therein mentioned, for the purpose of being examined touching such matters, and to produce any books, papers, or documents.

If the Judge before whom any administrator, or other person shall be summoned as aforesaid shall be of opinion that such administrator, or other person is in possession of, or has under his control, any moneys or property, or is seized of any real estate, that should be paid, delivered, conveyed, or transferred to the Public Trustee, the Judge may make an order requiring such administrator or other person to pay over, deliver, or convey all such moneys or property or real estate to the Public Trustee within such time as the Judge may deem expedient; and such order may be made in the absence of the person summoned, if the summons has been duly served upon him.

Order for transfer of property.

The Judge before whom such proceedings shall be taken may order such administrator, or other person so summoned and examined to pay all costs and expenses of, and incidental to such summons and examination, and if the Judge shall not so order, then such costs and expenses shall be paid by the administrator of the estate with reference to which the proceedings shall be taken out of the general funds of such estate in priority to all other claims, or, if the Judge shall so order, out of any particular portion of such funds.

Order as to costs.

14. Any administrator or other person who, after receiving any summons under this Act to appear before any Judge, shall fail to attend at the time and place mentioned, or who, upon attending, shall refuse to be sworn or neglect to answer any question that may be put to him by or on behalf of the Public Trustee, or who having been summoned to produce any books, papers, deeds, or documents shall fail to produce the same without valid excuse, or if so required, hand such books, papers, deeds, or documents over to the Public Trustee, or who shall disobey any order made by any Judge upon the hearing of any such summons shall be guilty of contempt of Court, and thereupon the Judge may make an order (if on the ground of failure to attend as aforesaid upon an affidavit of service of the summons) for the arrest or imprisonment of such administrator, or other person for such period, either definite or indefinite, as he shall think fit, and such order may be enforced in the same manner as an order of the Supreme Court for the attachment of any person for contempt of Court.

Result of disobedience of summons.

The Judge may also order such administrator or other person to pay the costs of such proceedings.

Costs.

The order of any Judge, under this Act, for payment of money may be enforced by execution in the same manner as a judgment or decree of the Supreme Court.

Enforcement of order.

15. The payment and delivery by an administrator to the Public Trustee

Administration bondsmen relieved.

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Trustee of the moneys and property in his possession and under his control, and the conveyance or transfer by him to the Public Trustee of any real estate, being the whole or portion of any estate under administration and belonging to any person not *sui juris*, pursuant to this Act, shall have the effect of discharging all parties to the bond given to the Curator of Intestate Estates, or Public Trustee, upon the granting of the letters of administration in respect of such estate, from further responsibility in respect of the moneys or property so paid over or delivered.

Money received by Public Trustee to be paid into bank and invested.

16. All moneys belonging to any estate received by the Public Trustee under the foregoing provisions shall forthwith be paid by him to an account at some incorporated or chartered bank in Adelaide, and shall then, until required for payment to the persons entitled thereto, be invested by him in Government securities (or on mortgage of real estate), or deposited at interest in the Savings Bank of South Australia, or in some incorporated or chartered bank in Adelaide.

Appointment of Board of Advice.

17. The Governor shall appoint a Board of Advice consisting of three persons, of whom two shall form a quorum, who shall meet at such times as shall be necessary for the purposes of considering and determining upon the investment of the funds under the control of the Public Trustee, the sale, mortgage, lease, or other disposal of real estate vested in such Public Trustee, the sale or other disposal of any investments or securities held by such Public Trustee, and generally for conferring with and advising such Public Trustee in carrying out the provisions of this Act.

Duties of Board.

Remuneration.

The persons forming such Board shall be remunerated for their trouble by a fee of Two Guineas paid to each for every Board meeting which he shall attend, and such fees shall be charged to the general expenses of the office of the Public Trustee.

Power of postponement of sale and leasing of real estate and chattels real.

18. The Public Trustee may, with the approval of the Board of Advice, postpone for any period the sale, realisation, and conversion into money of any real or personal estate coming into his possession or under his control, and in the meantime may demise or lease any real estate or chattels real to such person, at such rent, upon such terms and conditions, and in such manner (not inconsistent with the tenure of such real estate or chattels real) as the Board of Advice shall approve.

Indemnity to persons having dealings with Public Trustee.

19. No person purchasing or selling any real or personal estate, or receiving or paying any money from or to, or having any other transaction with the Public Trustee which requires the authority of the Board of Advice, shall be bound or entitled to require evidence that such authority has been given, further than the signature of some person purporting to be the signature of the Chairman of the Board of Advice, but such signature shall so far as all persons having any such transaction as aforesaid with the Public Trustee are concerned

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cerned be conclusive evidence of the regularity of such transaction on the part of the Public Trustee and Board of Advice.

20. The Public Trustee may apply, in such manner as the Board of Advice shall approve, the whole or any part of the income arising from any real or personal estate under his control, belonging to any person not *sui juris*, towards the maintenance or education of such person; and the Public Trustee may, with such approval, pay such interest or income to the legal or natural guardian or committee of such person without seeing to the application thereof or requiring any account for the same.

Maintenance and education of person not *sui juris*.

If the income arising from any moneys invested as aforesaid shall be insufficient for the maintenance or education of such person any Judge may order the Public Trustee to apply the principal moneys whence such income arises, or any part thereof, towards such maintenance and education, in the same manner as the income only would have been applicable.

Principal may in certain cases be similarly applied.

21. If it shall seem expedient to the Public Trustee that any moneys in his hands, belonging to any minor, should be paid for the advancement in life or benefit of such minor, then the Public Trustee, or any other person entitled by law to make such application, may apply to a Judge to authorise such payment, and such Judge may, upon such evidence as he shall think fit, make an order for such payment accordingly, and upon such order being made the Public Trustee shall apply such moneys pursuant thereto.

Advancement of money for minor's benefit.

22. If the Public Trustee shall have under his control the real or personal estate of any female under the age of twenty-one years, who shall marry, the Public Trustee shall, if ordered by a Judge, pay over such moneys, or transfer the securities held in respect thereof, and convey or transfer such real estate, to such two or more persons as a Judge may approve, to be held by such persons as trustees upon such trusts, to be defined by deed, as a Judge may approve.

Marriage of female.

23. All moneys in the hands of and all real estate vested in the Public Trustee which shall belong to any person who shall become *sui juris* shall be paid over, or the securities held in respect thereof transferred, and any such real estate conveyed or transferred by the Public Trustee to such persons, who shall thereupon, at the request of the Public Trustee, sign a receipt in the form or to the effect contained in the Second Schedule to this Act, which receipt when signed shall have the effect of releasing and discharging the Public Trustee from all further duty and liability in respect of such real and personal estate in the same manner as a release such as a *cestui-que-trust* would be required to execute to a trustee under similar circumstances.

Payment of trust moneys on termination of trust.

24. Any person making any will or codicil may appoint the Public Trustee executor or trustee thereof, either solely or jointly with any other person or persons; and the Public Trustee shall, on the death of such person, accept the trust so reposed in him, and carry out the trusts

Public Trustee may be appointed trustee or executor of wills.

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trusts of such will or codicil according to law: Provided that where the Public Trustee shall be appointed executor or trustee jointly with any other person, all moneys belonging to the estate, and received on account thereof, shall be received by and remain subject to the control of the Public Trustee alone, and shall be held by him on account of the estate, and in such case the receipt of the Public Trustee only shall be a sufficient discharge to persons paying money belonging to the estate.

Public Trustee may refuse to act in certain cases.

25. The Public Trustee may, by leave of a Judge, refuse to act in reference to any estate in cases where, in the opinion of a Judge, the complicated, uncertain, or risky nature of the trusts or duties to be performed render it undesirable that the Public Trustee should act, and thereupon this Act shall be deemed not to apply to such estate, but the same shall be administered in the same manner as if this Act had not been passed.

Real estate and securities not to be disposed of by Public Trustee without approval of Board of Advice.

26. It shall not be lawful for the Public Trustee to enter into any agreement for the sale or mortgage or lease or for any other disposal of any real estate vested in him under the authority of this Act except by the written approval of the Board of Advice, nor without the like approval to enter into any agreement for the sale or other disposal of any securities in which the funds under the control of the Public Trustee shall be invested.

Conduct of administration by Public Trustee may be referred to Supreme Court.

27. Upon petition in that behalf presented to the Supreme Court by any member of the Board of Advice or by any person showing to the satisfaction of the Court or any Judge thereof that he has an interest in any property for the time being administered by the Public Trustee, the said Court or Judge shall have power to summon the Public Trustee and require him to answer the allegations of the petition, and may thereupon at a hearing to be appointed in that behalf make such order in relation to the conduct of the Public Trustee as trustee, guardian, or committee in the matter giving rise to such petition as the said Court or Judge shall think fit: And may also order the Public Trustee to produce or to pay and deliver over all money, books, and documents in his possession, control or custody to any person or persons named in such order.

On hearing which orders may be made thereon.

Public Trustee and other persons may obtain judicial advice.

28. The Public Trustee, when in difficulty or doubt, shall at all times apply to a Judge for advice or direction as to matters connected with the administration of any estate, or construction of any will, codicil, deed, or document, and such application shall be made either *ex parte* or upon summons served upon any of the parties interested, and any person interested in any estate who shall be dissatisfied with the conduct of the Public Trustee in any matter connected with the management or administration thereof, may apply to a Judge by summons, to be served upon the Public Trustee: And the Judge may, upon the hearing of such summons, make any order that he shall see fit as to the administration of the estate, or the construction of the will, codicil, deed,

or

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or document, which shall be the subject of the application, and also as to the cost of the application, and such order shall have the same effect, or be of the same force or validity, as if the same had been a decree or order made in a suit where all parties concerned were represented: Provided that the Judge shall have power to refer any question that may arise under any will or administration for the opinion of the Supreme Court by way of special case, or may direct an issue to be tried by the Supreme Court.

29. In order to defray the expenses incidental to the establishment and maintenance of the office of Public Trustee, there shall be charged, on all moneys received by the Public Trustee on account of estates coming under his control, a commission, according to the scale of charges contained in the Third Schedule of this Act.

Charges for carrying out trusts.

Such commission shall be deducted by the Public Trustee from the moneys passing through his hands as aforesaid, and shall be paid by him, together with any fines which may have been received by him, to the Treasurer, who shall carry the same to a separate account, to which shall be charged all expenses of and incidental to the establishment and maintenance of the said office.

Disposition of charges.

The Governor may, from time to time, reduce or increase the rate of commission chargeable as aforesaid, according to the sufficiency of the moneys received to defray such expenses.

Charges may be altered.

30. All costs and expenses of and incidental to any proceedings to obtain judicial advice and other applications to the Supreme Court, and all costs and expenses incurred by the Public Trustee in instituting and carrying on or defending any action or suit, and all other costs and expenses incurred by the Public Trustee in the performance of his duties under this Act, or in connection with any estate which are not ordinarily incurred in the administration of estates, shall be charged against the funds of the estate in respect of which such costs and expenses shall be incurred.

Extraordinary costs and expenses how to be defrayed.

31. The Public Trustee shall keep full and accurate accounts of all estates and matters coming under his control, and of all his dealings and transactions with such estates, and such accounts shall be audited by the Auditor-General half-yearly.

Public Trustee to keep accounts.

32. The public revenue of the said province shall be responsible for the due application of all moneys which shall come into the hands of the Public Trustee, and for the payment of all judgments, decrees, rules or orders which may be given or made against the Public Trustee: Provided that the Public Trustee shall not be responsible for such moneys, nor for any act, deed, or omission to a greater extent than a trustee would by law be now responsible in a similar case.

Responsibility of Government for acts of trustee.

33. The Supreme Court, or any two of the Judges thereof, whereof the Chief Justice shall be one, shall have power to make rules and regulations for regulating the procedure and practice in all matters under

Rules and regulations.

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under this Act, and such rules and regulations, when published in the *Government Gazette*, shall have the force of law, and a copy of all such rules and regulations shall be laid before each House of Parliament within thirty days after the meeting thereof, if Parliament is then sitting, or if not, within thirty days after the commencement of the then ensuing session. And if an address is presented to the Governor by either House of Parliament within the next subsequent thirty days on which such House shall have sat, praying that any such rules or regulations may be annulled, the Governor shall thereupon annul the same, and the rules or regulations so annulled shall thenceforth become void, but without prejudice to the validity of any proceeding which may, in the meantime, have been taken under the same.

Amendment of
Testamentary Causes
Act.

34. All costs and expenses of and incidental to the summoning of any administrator, pursuant to the sixty-second section of the "Testamentary Causes Act, 1867," shall be chargeable to, and paid out of, either the estate in respect of which such administrator shall be summoned, or by such administrator as a Judge of the Supreme Court shall order.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.

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SCHEDULES REFERRED TO.

FIRST SCHEDULE.

South [Royal Arms] Australia.

To _____ of _____
 You are required to attend at my office, Victoria-square, Adelaide, on
 the _____ day of _____ 18____, at _____ o'clock, in the _____ noon,
 for the purpose of giving evidence with regard to _____

And you are required to bring with you and produce to me, at the time and place
 aforesaid,

and all other deeds, documents, and papers in anywise relating to the said matter.

Dated this _____ day of _____ 18____.

_____, Public Trustee.

N.B.—If you fail to attend at the place and time aforesaid, or to bring with you
 the deeds, documents, and papers abovementioned, you will be liable to a penalty of
 Ten Pounds for each offence.

SECOND SCHEDULE.

I, _____ of _____ do hereby
 acknowledge that the Public Trustee has paid to me all moneys, and conveyed,
 assigned, transferred, and assured to me all real and personal estate to which I am
 entitled under _____

Dated at _____ this _____ day of _____ 18____.

Witness,

THIRD SCHEDULE.

Scale of Charges.

In all cases the Public Trustee's charge is to be exclusive of commissions and
 expenses necessarily paid to auctioneers or agents, of all legal costs, and of cash
 disbursed for postages, telegrams, advertising, surveys, valuations, travelling expenses,
 and other expenses incurred for the benefit of the estate.

For realising the property of an estate.

Not exceeding £10,000	2½ per cent. commission.
For the excess over £10,000.....	1 " "

For collecting rents, interest, dividends, or profits.

For the first £1,000	5 per cent. commission.
Over £1,000	2½ " "

For the investment of money.

Nil.