

TRUSTEE (PUBLIC).

ORDINANCE No. 15 OF 1910.

A.D. 1910. AN ORDINANCE to provide for the appointment of a Public Trustee.

[10th September, 1910.]

BE it enacted by the Governor of British Guiana, with the advice and consent of the Court of Policy thereof, as follows:—

Establishment of Public Trustee.

Office of Public Trustee.

1.—(1) The Governor may appoint a fit and proper person to be Public Trustee under this Ordinance.

(2) The Public Trustee shall be a body corporate under that name with perpetual succession, and may sue and be sued under the above name.

Official Receiver to be Public Trustee till other appointment made.

(2) Unless and until the Governor appoints some person to be Public Trustee, the Official Receiver appointed under the Official Receiver's Ordinance, 1905, ⁽¹⁾ shall be the Public Trustee, and any person lawfully discharging the duties of Official Receiver under the said Ordinance, shall have all the rights, powers and liabilities, and may discharge any of the duties of the Public Trustee.

Powers and Duties of Public Trustee.

General powers and duties of Public Trustee.

3.—(1) Subject to and in accordance with the provisions of this Ordinance and Rules made thereunder the Public Trustee may, if he thinks fit,—

- (a) Act in the administration of the estates of deceased persons;
- (b) Act as executor or administrator of a will;
- (c) Act as guardian or curator of the property of any minor or other person under disability; and
- (d) Take possession of and administer the estate of any person who is absent from the Colony and who is not fully represented by any attorney in the Colony, and who has left debts unpaid.

(2) Subject to the provisions of this Ordinance, and to the rules made thereunder, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of this Ordinance, and shall have all the same powers, duties, and liabilities, and be entitled to the same rights and immunities and be subject to the control and orders of the Court, as a private person acting in the same capacity.

(3) The Public Trustee may decline, either absolutely or except on the prescribed conditions, to accept any trust, but he shall not decline to accept any trust on the ground only of the small value of the trust property.

¹ See Ordinance No. 6 of 1905, under "Bankruptcy."

(4) The Public Trustee shall not accept any trust which involves the management or carrying on of any business, except when acting under section nine of this Ordinance or except in the cases in which he may be authorized to do so by rules made under this Ordinance, nor any trust under a deed of arrangement for the benefit of creditors.

(1) *In the administration of Estates.*

4.—(1) Any person, who in the opinion of the Public Trustee would be entitled to apply to the Court for the appointment of an administrator of the estate of a deceased person, may apply to the Public Trustee to administer the estate and the Public Trustee shall administer the estate, unless he sees good reason for refusing to do so. Administra-
tion of estates.

(2) On the Public Trustee undertaking by declaration in writing signed by him and deposited in the office of the Registrar of British Guiana to administer the estate he shall have the same power as if he had been appointed by a last will of the deceased person to be executor.

(3) For the purposes of the administration the Public Trustee may exercise such of the administrative powers and authorities of the Supreme Court as may be conferred upon him by rules under this Ordinance, subject to such conditions as may be imposed by the rules.

(4) Rules shall be made under this Ordinance for enabling the Public Trustee to take the opinion of the Court on any question arising in the course of any administration without judicial proceedings, and otherwise for making the procedure under this section simple and inexpensive.

(5) Where proceedings have been instituted in any Court for the administration of an estate, and by reason of the small value of the estate it appears to the Court that the estate can be more economically administered by the Public Trustee than by any other person, or that for any other reason it is expedient that the estate should be administered by the Public Trustee instead of by any other person, the Court may order that the estate shall be administered by the Public Trustee, and thereupon (subject to any directions by the Court) this section shall apply as if the administration of the estate had been undertaken by the Public Trustee in pursuance of this section.

(2) *As Executor.*

5. The Public Trustee may by that name or any other sufficient description, be appointed executor of any will by the testator, in the same manner as if he were a private executor and in such case he shall have the same powers as if he were a private executor.

Appointment
of Public
Trustee as
executor.

(3) *As Guardian and Curator.*

6. The Public Trustee may by that name or any other sufficient description be appointed by will or by order of the Court guardian or curator of the property of any minor or other person under disability in the same manner as if he were a private person and in such cases he shall have the same powers as if he were a private guardian or curator.

Appointment
of Public
Trustee as
guardian and
curator.

(4) *In the Administration of Absentee's Estates.*

Creditor may apply to Public Trustee to administer estate of absentee.

7.—(1) Any creditor of a person who is absent from the Colony and who is not represented by any attorney in the Colony appointed under a duly registered power of attorney may apply to the Public Trustee to take possession of and administer the estate of such absent person.

(2) Upon such application being made and upon the Public Trustee being satisfied that such person is absent from the Colony, and that he is not represented by any attorney in the Colony appointed as aforesaid, and that the applicant is a *bonâ fide* creditor of such person, the Public Trustee may take possession of the estate: Provided that the Public Trustee shall not take possession of any such estate unless he is satisfied that the assets of such estate are probably sufficient to defray the cost of taking possession thereof and administering it.

Absentee to be communicated with if possible.

8. The Public Trustee before taking possession under this Ordinance of the property of any absent person who is known and can be communicated with, shall communicate in writing with such person, and shall not interfere, except in case of an emergency which, in the opinion of the Public Trustee, makes it necessary to take possession of the estate for the protection of the creditors of such absent person, and in such case the Public Trustee shall take immediate possession.

Proceedings on taking possession of estate of absent owner.

9.—(1) Where the Public Trustee takes possession of the estate or property of such absent person, he shall give immediate intimation thereof by notice published in the *Gazette* and in one newspaper at least three times, with an interval of a week between each publication.

(2) The Public Trustee shall use due diligence to ascertain where such absent person is and his place of residence and address, and, if the same can be ascertained, shall use due diligence to inform such person that he has so taken possession, and shall require him to appoint an attorney in the Colony to represent his interests.

(3) Where the place of residence and address of such person cannot be ascertained, the Public Trustee shall apply to the Court for directions.

(4) Where such person refuses or neglects, without sufficient cause, to appoint an attorney in the Colony within a reasonable time after being required to do so, the Public Trustee shall apply to the Court for directions.

(5) Where the Public Trustee applies to the Court under this section, the Court, if it is satisfied:—

- (a) That the place of residence and address of such person cannot be ascertained; or
- (b) That such person has been afforded sufficient opportunity to enable him to appoint an attorney in the Colony and neglects to do so;

shall direct that the estate or property shall be forthwith realized, and after the expiration of such time as may be fixed by the Court the Public Trustee shall deal with such proceeds and dis-

tribute the same amongst the creditors of such person in the same manner as if such person had been adjudged insolvent.

(6) Where the Court is not so satisfied or where such person is under any disability, the Court shall give such directions as the circumstances may require.

(7) Until the Public Trustee receives directions from the Court, he shall administer such estate or property according to the usual legal course of administration in this Colony by attorneys of absent parties:

Provided always that where it appears that the owner has committed an act of insolvency or that the claims on the estate exceed the assets, the Public Trustee shall forthwith apply to the Court, and the Court, if it is satisfied of the fact, shall thereupon adjudge the estate to be insolvent, and the same shall then be administered not under this Ordinance but under, and in accordance with the provisions of the Insolvency Ordinance as if the owner thereof had been adjudged insolvent.

Supplemental Provisions.

10.—(1) A person aggrieved by any act or omission or decision of the Public Trustee in relation to any trust or administration may apply to the Court, and the Court may make such order in the matter as the Court thinks just.

Appeal to the Court.

(2) Subject to Rules of Court, an application under this section shall be made to a Judge in Chambers.

11.—(1) The Public Trustee shall not, nor shall any of his officers, act under this Ordinance for reward, except as provided by this Ordinance.

Mode of action of Public Trustee.

(2) The Public Trustee may, subject to the rules made under this Ordinance, employ for the purposes of any trust or administration such solicitors, bankers, accountants, and brokers, or other persons as he may consider necessary.

(3) Where any bond or security would be required from a private person upon the grant to him of administration, or upon his appointment to act in any capacity, the Public Trustee, if administration is granted to him or if he is appointed to act in such capacity as aforesaid, shall not be required to give such bond or security, but shall be subject to the same liabilities and duties as if he had given such bond or security.

(4) The entry of the Public Trustee by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name of the Public Trustee on its books by reason only that the Public Trustee is a corporation, and in dealings with property, the fact that the person or one of the persons dealt with is the Public Trustee, shall not of itself constitute notice of a trust.

Rules, Definitions and Short Title.

12. The Governor and Court of Policy shall make rules for carrying into effect the objects of this Ordinance, and in particular for all or any of the following purposes:—

Rules.

(a) Prescribing the trusts, administrations, or duties the Public Trustee is authorized to accept or undertake, and the security, if any, to be given by the Public Trustee and his officers;

- (b) The transfer to and from the Public Trustee of any property;
- (c) The accounts to be kept and an audit thereof;
- (d) The establishment and regulation of any branch office;
- (e) Excluding any trusts or administrations from the operation of this ordinance, or any part thereof;
- (f) The form and manner in which notices under this Ordinance shall be given; and
- (g) The fees, whether by way of percentage or otherwise, to be charged in respect of the duties of the Public Trustee.

Definitions.

13. In this Ordinance, unless the context otherwise requires:—

“ Estate ” includes every description of movable and immovable property, goods, chattels, money, securities for money, and all writings relating to or evidencing any right or title to any property and all rights of action and claims.

“ Trust ” includes every case where any person acts as executor, guardian, curator, administrator, receiver, or sequestrator and every case where any person is appointed by the Court or under the provisions of any Ordinance to administer the property of another person for his benefit.

“ Private executor or administrator ” means an executor or administrator other than the Public Trustee.

“ Private guardian and curator ” means a guardian and curator other than the Public Trustee.

“ Will ” has the same meaning as in the Wills Ordinance, 1906. ⁽¹⁾

“ Court ” means the Supreme Court or any Judge thereof.

“ Prescribed ” means prescribed for the time being by Rules under this Ordinance.

14. This Ordinance may be cited as the Public Trustee Ordinance, 1910.