

CHAPTER 245.

PUBLIC TRUSTEE.

[No. XV of 1910.]

[10th September, 1910.]

Short title.

1. This Ordinance may be cited as the Public Trustee Ordinance.

Interpretation.

2. 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, committee, 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 or committee, or receiver ” means a guardian or committee, or receiver, other than the Public Trustee;

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“ will ” has the same meaning as in the Wills Ordinance;

“ Court ” means the Supreme Court or any judge thereof;

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

APPOINTMENT OF PUBLIC TRUSTEE.

Office.

3.—(1) The Governor may appoint a fit and proper person to be the 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 thereunder.

4. Unless and until the Governor appoints some person to be the Public Trustee, the Official Receiver appointed under the Official Receiver Ordinance shall be the Public Trustee, and anyone lawfully discharging the duties of official receiver under that Ordinance, shall have all the rights, powers and liabilities, and may discharge any of the duties, of the Public Trustee.

Official Receiver to be Public Trustee till other appointment made.

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POWERS AND DUTIES OF PUBLIC TRUSTEE.

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

General powers and duties.

- (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 committee, or receiver, of the property of any infant or other person under disability, as the case may be; 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 a trust on the ground only of the small value of the trust property.

(4) The Public Trustee shall not accept any trust which involves the management or carrying on of any business, except when acting under section eleven of this Ordinance, or except in the cases in which he may be authorised to do so by rules made hereunder, or any trust under a deed of arrangement for the benefit of creditors.

(1) *In the administration of estates.*Administra-
tion of
estates.

6.—(1) Anyone, 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.

(2) On the Public Trustee undertaking by declaration in writing, signed by him and deposited in the deeds registry 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 those administrative powers and authorities of the Supreme Court which may be conferred upon him by rules under this Ordinance, subject to the conditions 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 him instead of by any other person, the Court may order that the estate shall be administered by him, and thereupon (subject to any directions by the Court) this section shall apply as if the administration of the estate had been undertaken by him in pursuance of this section.

(2) *As Executor.*Appointment
as executor.

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

(3) *As Guardian, or Committee, or Receiver.*

8. The Public Trustee may, by that name or any other sufficient description, be appointed by will or by order of the Court guardian, or committee, or receiver, of the property of any infant or other person under disability, in the same manner as if he were a private person and in those cases he shall have the same powers as if he were a private guardian, or committee, or receiver.

As guardian
and
committee.

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

9.—(1) Any creditor of a person absent from the colony and 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 the absent person.

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

(2) Upon the application being made, and upon the Public Trustee being satisfied that the person is so absent and unrepresented as aforesaid and that the applicant is bonâ fide his creditor, the Public Trustee may take possession of the estate; but the Public Trustee shall not take possession of the estate unless he is satisfied that the assets thereof are probably sufficient to defray the cost of taking possession thereof and administering it.

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

Absentee to
be communi-
cated with
if possible.

11.—(1) Where the Public Trustee takes possession of the estate or property of the 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.

Proceedings
on taking
possession
of estate of
absent
owner :

(2) The Public Trustee shall use due diligence to ascertain where the absent person is and his place of residence and address, and, if they can be ascertained, shall use due diligence to inform him that the Public Trustee 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 the person cannot be ascertained, the Public Trustee shall apply to the Court for directions.

(4) Where the 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 satisfied—

(a) that the place of residence and address of the person cannot be ascertained; or

(b) that he 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 realised, and after the expiration of the time fixed by the Court the Public Trustee shall deal with the proceeds and distribute them amongst the creditors of the person in the same manner as if he had been adjudged insolvent.

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

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

Proviso.

Provided 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 satisfied of the fact, shall thereupon adjudge the estate to be insolvent, and it 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.

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FINANCIAL PROVISIONS.

General
revenue
chargeable
with
liability
incurred by
Public
Trustee.

12.—(1) The general revenue of the colony shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, executor, or administrator, would be personally liable to discharge, except where the liability is one to which neither he nor any of his officers has in any way contributed, and which neither he nor any of his officers could, by the exercise

of reasonable diligence, have averted, and in that case the Public Trustee shall not, nor shall the general revenue of the colony, be subject to any liability.

(2) All sums payable in pursuance of this section shall be charged on and paid out of the general revenue of the colony.

13.—(1) The Public Trustee shall, in the months of February and August in each year, prepare and publish a list of all moneys in his hands which have been unclaimed for six months and upwards (other than the moneys mentioned in section two of the Public Trustee Ordinance, 1918, a section which has now had effect), and shall publish therewith a notice calling on all persons desiring to claim any of those moneys to establish their claim within five years from the date when the moneys came into the hands of the Public Trustee, and that date shall be expressed and set forth in the notice.

Publication of list of moneys unclaimed for six months.

(2) If no claim to any of the moneys is made and established within the time specified, they shall be paid to the Colonial Treasurer.

(3) All moneys paid over by the Public Trustee to the Colonial Treasurer, as provided by section two of the Public Trustee Ordinance, 1918, aforesaid, and by this section, shall become and be part and parcel of the general funds of the colony and all right, title, and interest of every person in and to them shall be barred:

Right of persons to moneys paid to Colonial Treasurer barred:

Proviso.

Provided that nothing herein contained shall be construed as in any way affecting the power of the Legislative Council to authorise the payment of any sum of money paid over to the Colonial Treasurer under the provisions of this Ordinance to anyone whom they may consider to have an equitable claim thereto, notwithstanding that all claims to payment of the money may be barred in law.

(4) The provisions of the last preceding sub-section shall apply to all moneys paid over by the Official Receiver to the Colonial Treasurer under the provisions of section twelve of the Immigration Ordinance, 1905, or by the Administrator General under the provisions of section one hundred and seven of the Administrator General Ordinance, 1887, (now repealed) and which remain unclaimed for five years.

Moneys paid to Colonial Treasurer under Immigration and Administrator General Ordinances.

14.—(1) All moneys received by the Public Trustee or Official Receiver on behalf of any trusts or estates administered by him, or received from an assignee in insolvency.

Moneys received by Public Trustee to be paid into bank.

shall, as soon after the receipt thereof as is practicable, be paid into the bank or banks from time to time directed by the Governor.

Payments to be made as directed by the Governor.

(2) All payments by the Public Trustee or Official Receiver of those moneys shall be made in the manner from time to time directed by the Governor in general instructions or regulations.

Sales at public auction.

15.—(1) Where it becomes necessary to sell at public auction any property belonging to an estate, trust, or company, which is being administered by the Official Receiver or Public Trustee under any Ordinance other than an Ordinance relating to insolvency, the property may be sold by the Official Receiver or Public Trustee personally, or by any officer or clerk of his department authorised by him.

(2) The Official Receiver and Public Trustee may charge a commission of three per centum on the proceeds of the sale.

SUPPLEMENTAL PROVISIONS.

Appeal to the Court.

16.—(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 any order in the matter it thinks just.

(2) Subject to rules of court, an application under this section shall be made to a judge in chambers.

Powers of Public Trustee.

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

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

(3) Where a bond or security would be required from a private individual 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 that capacity, shall not be required to give bond or security, but shall be subject to the same liabilities and duties as if he had done so.

(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.

18. The Governor and Legislative Council shall make Rules.
rules for carrying into effect the objects of this Ordinance, and in particular for all or any of the following purposes, namely,—

- (a) prescribing the trusts, administrations, or duties the Public Trustee is authorised to accept or undertake, and the security, if any, to be given by him and his officers;
 - (b) the transfer to and from him 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.
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