



ANNO VICESIMO SEPTIMO

# ELIZABETHAE II REGINAE

A.D. 1978

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## No. 80 of 1978

### An Act to amend the Administration and Probate Act, 1919-1975.

[Assented to 16th November, 1978]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Administration and Probate Act Amendment Act, 1978".

(2) The Administration and Probate Act, 1919-1975, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Administration and Probate Act, 1919-1978".

Commencement.

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation made for the purposes of subsection (1) of this section, suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation or a day to be fixed by subsequent proclamation.

Amendment of principal Act, s. 4—  
Interpretation.

3. Section 4 of the principal Act is amended by inserting after the definition of "matters and causes testamentary" the following definition:—

"the Public Trustee" includes any person for the time being acting in the office of the Public Trustee:.

Amendment of principal Act, s. 18—  
Bond to be required in certain circumstances before administration sealed.

4. Section 18 of the principal Act is amended by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Where an administrator is required to enter into a bond under section 31 of this Act, no administration shall be sealed under section 17 of this Act until that bond has been given.

5. Section 31 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of  
s. 31 of  
principal Act  
and enactment  
of section in its  
place.

31. (1) A person to whom administration is granted and who is required to enter into an administration bond under subsection (2) of this section, shall enter into a bond with the Public Trustee, with one or more sureties, conditioned upon—

Administration  
bonds.

- (a) duly getting in and administering the estate of the deceased;
  - (b) the delivery by the administrator at the office of the Public Trustee, within six months from the date on which administration was granted, or such extended time as the Public Trustee upon the application of the administrator may allow, of a statement and account, verified by the administrator's declaration, of all the estate of the deceased, and of his administration thereof;
  - (c) the delivery by the administrator to the Public Trustee of an account of his administration of the estate, verified by his declaration, whenever ordered by the Court to give such an account;
- and
- (d) the due performance by him of all acts required of him under this Act.

(2) Subject to subsection (3) of this section, a person to whom administration is granted is required to enter into an administration bond if—

- (a) he is not resident in this State;
- (b) he has any legal or equitable claim against, or interest in, the estate of the deceased arising from a liability incurred by the deceased before his death;
- (c) any person who is not *sui juris* is entitled to participate in the distribution of the estate;

or

- (d) the Court is of the opinion that in the circumstances of the case an administration bond should be required.

(3) Notwithstanding the provisions of subsection (2) of this section no administration bond shall be required of—

- (a) any agency or instrumentality of the Crown;
  - (b) the Public Trustee;
- or
- (c) any body corporate authorized by a special Act to administer the estates of deceased persons.

6. The following section is enacted and inserted in the principal Act after section 56 thereof:—

Enactment of  
s. 56a of  
principal Act.

56a. The Court may at any time, upon the application of the Public Trustee or any person interested in the estate of a deceased person, or of its own motion, order an administrator to deliver at the office of the Public Trustee a statement and account, verified by the administrator's declaration, of all the estate of the deceased, and of his administration thereof.

Court may  
order delivery  
of statement  
and account.

Amendment of principal Act, s. 58—  
Proceedings to compel account.

7. Section 58 of the principal Act is amended by striking out from paragraph (b) of subsection (1) the passage “section 31” and inserting in lieu thereof the passage “section 56a”.

Amendment of principal Act, s. 71—  
Payment without production of probate or letters of administration.

8. Section 71 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:—

(1a) Where a patient in a Government hospital dies and immediately before his death money or other property (not exceeding in amount or value two thousand dollars) was held on his behalf by the hospital, the Treasurer may, in his discretion, direct that the money or property be paid or delivered to the surviving spouse of the deceased, or to any other person who is, in the opinion of the Treasurer, entitled to it, or that the money or property be divided among any such persons.;

(b) by striking out from subsection (3) the passage “any payment made” and inserting in lieu thereof the passage “the payment of money or the delivery of property”;

(c) by striking out from subsection (3) the passage “money paid under this section from any liability to account for or apply such money” and inserting in lieu thereof the passage “money paid or property delivered under this section from any liability to account for or apply that money or property”;

and

(d) by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) In this section—

“Government employee” means a person employed in the service of the Crown whose remuneration is paid out of money under the control of the Treasurer:

“Government hospital” means—

(a) any Government hospital within the meaning of the South Australian Health Commission Act;

or

(b) any other institution declared by the Treasurer, by notice published in the *Gazette*, to be a Government hospital for the purposes of this section.

Repeal of ss. 73-76 of principal Act and enactment of sections in their place.

Appointment of the Public Trustee.

9. Sections 73 to 76 (inclusive) of the principal Act are repealed and the following sections are enacted and inserted in their place:—

73. (1) The Governor may, by notice published in the *Gazette*, appoint a person to hold the office of Public Trustee.

(2) A person appointed to hold the office of Public Trustee shall be appointed for a term of five years or a term expiring on the day on which he attains the age of sixty-five years (whichever is the lesser) and upon the expiration of a term of appointment shall (if he has not yet attained the age of sixty-five years) be eligible for re-appointment.

(3) Subject to this section, the Public Trustee shall hold office upon terms and conditions determined by the Governor.

(4) The Governor may remove the Public Trustee from office if—

(a) he becomes incapable, by reason of mental or physical illness or disability, of carrying out the functions of his office;

or

(b) both Houses of Parliament present an address praying for his removal.

(5) The Governor may suspend the Public Trustee from office upon the ground of his incompetence or misbehaviour and, in that event—

(a) a full statement of the reason for the suspension shall be laid before Parliament within seven days of the suspension if Parliament is then in session or, if not, within seven days of the commencement of the next session of Parliament;

and

(b) if within one month of the statement being laid before Parliament no address praying for the removal of the Public Trustee is presented to the Governor by either House of Parliament, he shall be restored to office but if such an address is presented, the Governor may remove him from office.

(6) The office of the Public Trustee shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he is removed from office by the Governor in pursuance of subsection (4) or subsection (5) of this section;

or

(d) he is convicted of an indictable offence or is sentenced to imprisonment for an offence.

(7) Except as provided by this section, the Public Trustee shall not be removed or suspended from office, nor shall the office of the Public Trustee become vacant.

74. (1) The Governor may, subject to the Public Service Act, 1967-1978, appoint one or more deputies of the Public Trustee.

Deputy  
Public  
Trustee.

(2) In the absence of the Public Trustee from the duties of his office the most senior of his deputies who is available to act in the office of Public Trustee shall be the Acting Public Trustee.

(3) The Acting Public Trustee shall have all the powers, authorities, duties and obligations of the Public Trustee.

(4) The Acting Public Trustee shall cease to occupy that position upon the resumption by the Public Trustee of the duties of his office.

75. (1) The Public Trustee—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable of suing and being sued;

The office of  
Public Trustee

- (c) shall be capable of acquiring, holding, dealing with, and disposing of any interest in real or personal property;
- (d) shall be capable of acquiring or incurring any other rights or liabilities;
- and
- (e) shall have the powers, authorities, functions and duties conferred, assigned or imposed upon him by or under this or any other Act.

(2) The Public Trustee is an instrumentality of the Crown.

(3) An apparently genuine document purporting to bear the common seal of the Public Trustee shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Public Trustee.

Policies to be observed by the Public Trustee.

76. (1) The Public Trustee shall observe and carry out any direction of the Minister on a matter of policy.

(2) No direction under this section shall be such as to affect the efficient discharge of the obligations of the Public Trustee at law or in equity.

(3) The Public Trustee shall, at the request of the Minister, report to the Minister on any matter referred to in the request.

(4) The Public Trustee shall not, in a report prepared under subsection (3) of this section, divulge information in breach of any confidence reposed in him by any clients of the Public Trustee.

10. Section 77 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

Repeal of s. 77 of principal Act and enactment of section in its place.

Capacities in which Public Trustee may act.

77. The Public Trustee is empowered to act in any of the following capacities:—

- (a) as an executor of the will, or administrator of the estate, of any deceased person;
- (b) as a trustee, administrator or manager in respect of any property;
- (c) as a custodian, curator or stakeholder in respect of any property;
- (d) as an agent or attorney;
- (e) as the committee or guardian of a person of unsound mind;
- (f) as a next friend or guardian of an infant;
- or
- (g) in any other capacity prescribed by or under this Act or any other Act.

Power of attorney continues to be exercisable notwithstanding that donor ceases to be *sui juris*.

77a. (1) The Public Trustee may, subject to the terms on which a power of attorney has been granted, continue to act in pursuance of the power of attorney notwithstanding that the donor of the power has ceased to be *sui juris*.

(2) A power of attorney granted to the Public Trustee by a person who has subsequently ceased to be *sui juris*—

(a) shall determine upon the appointment, in pursuance of any Act, of a manager or administrator of the estate of that person;

and

(b) may be revoked at any time by the Court.

11. Section 79 of the principal Act is amended—

Amendment of principal Act, s. 79—  
Court may order administration to be granted to Public Trustee in certain cases.

(a) by striking out paragraph VIII and inserting in lieu thereof the following paragraph:—

VIII. Where any executor, or any person entitled to administration, requests the Public Trustee, in writing, to apply for an order under this section;;

(b) by striking out from paragraph IX the passage “the death or incapacity of the executor or administrator” and inserting in lieu thereof the passage “the death, incapacity, insolvency or absence from the State of the executor or administrator”;

and

(c) by inserting after paragraph IX the following paragraph:—

X. Where part of an estate, already partly administered, is unadministered and the executor or administrator cannot be found.

12. Section 106 of the principal Act is repealed.

Repeal of s. 106 of principal Act.

13. The following section is enacted and inserted in the principal Act after section 111 thereof:—

Enactment of s. 111a of principal Act.

111a. (1) The Public Trustee may be appointed to be custodian trustee of any trust—

Custodian trustee.

(a) by order of the Court made on the application of any beneficiary or of any person on whose application the Court may order the appointment of a new trustee;

(b) by the instrument constituting the trust;

or

(c) by any person having power to appoint new trustees.

(2) Upon an appointment under subsection (1) of this section—

(a) the trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose orders may be made by the Court vesting the property in the custodian trustee;

(b) those persons who would, if there were no custodian trustee, be the sole trustees of the trust shall have the management of the trust property;

(c) as between the custodian trustee and the managing trustees (without prejudice to the rights of any other persons) the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto and be entitled to take copies thereof or extracts therefrom.

(3) Subject to subsection (4) of this section the custodian trustee shall do all things necessary to enable the managing trustees to perform their functions and exercise their powers under the trust.

(4) Nothing in subsection (3) of this section requires the custodian trustee to do anything that is a breach of trust or subjects him to a personal liability.

(5) The custodian trustee shall not be liable for any act or default of the managing trustees to which he has not consented.

(6) All moneys payable out of the trust estate shall be paid by the custodian trustee and all moneys payable to the trust estate shall be paid to the custodian trustee or as he directs.

(7) Where the custodian trustee directs that trust property be paid or delivered to the managing trustees or at their direction he shall not be responsible for the application of that property or for its loss or misapplication.

(8) The custodian trustee shall not have power to appoint a new trustee but he shall be entitled to apply to the Court for the appointment of a new trustee in the circumstances that the managing trustees could apply to the Court for that purpose.

(9) On application by the custodian trustee, any of the managing trustees or any beneficiary the Court may—

(a) terminate the custodian trusteeship;

and

(b) make such vesting orders and give such directions as are necessary,

if it is satisfied that—

(c) termination of the trusteeship is the wish of the majority of beneficiaries;

or

(d) there are other reasons that make such an order expedient.

(10) The custodian trustee or the managing trustees may submit a dispute between them to a Judge in chambers who may determine the matters in dispute in such manner as he considers just.

Amendment of  
principal Act,  
s. 112—  
Charges of  
Public Trustee.

14. Section 112 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “according to the scale for the time being fixed by regulation under this section”;

and

(b) by inserting after subsection (1) the following subsections:—

(1a) Subject to subsection (1b) of this section, the commission or fees to which the Public Trustee is entitled shall be determined in accordance with the regulations.

(1b) The Court may, upon the application of the Public Trustee, determine—

(a) the amount of the commission or fees to which the Public Trustee is entitled in a particular case;

or

(b) the basis upon which the commission or fees to which the Public Trustee is entitled in a particular case are to be determined.

15. Section 118a of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (1) the passage “acquire land” and inserting in lieu thereof the passage “acquire any interest in land”;

and

(b) by striking out from subsection (4) the passage “on the advice of the Auditor-General”.

Amendment of principal Act, s. 118a—  
Expenditure of moneys from common fund in acquisition of land.

16. The following Division comprising the following sections is enacted and inserted in the principal Act after Division III of Part IV thereof:—

Enactment of Division IV of principal Act.

#### DIVISION IV—UNCLAIMED PROPERTY

118b. The Public Trustee may be appointed manager in accordance with this Division of any real or personal property in this State in the following cases:—

Appointment of Public Trustee as Manager of unclaimed property.

(a) when, after due inquiry, it is not known who the owner of the property is, or where he is, or whether he is alive or dead;

(b) when the owner of the property is absent from this State or dead and, after due inquiry, it is not known whether he has any agent or administrator in this State with authority to take possession of and administer the property, or where any such agent or administrator is, or whether he is alive or dead.

118c. (1) The Court may appoint the Public Trustee as manager of any property under this Division on application made *ex parte* by the Public Trustee and on being satisfied that the appointment is advisable—

Mode of appointment.

(a) in the interests of the owner of the property or of any other person;

or

(b) to secure the development or better utilisation of land.



(2) Notice of any such appointment shall be published in the *Gazette*.

(3) In any case where the Court considers that due inquiry has not been made for the owner of the property specified in any application made under subsection (1) of this section or for his agent or administrator, or as to whether the property is subject to any trust, it may, before making an order, require further inquiry to be made or advertisements published or notice given, and adjourn the application to enable that to be done.

Powers of  
Public  
Trustee.

118d. (1) Unless the Court in any particular case otherwise orders, the Public Trustee, as manager under this Division of any property, may—

- (a) take or recover possession of the property, and recover all money, damages, and mesne profits payable to the owner or his administrator in respect of the property, whether the payment became due before or after the Public Trustee became manager of the property;
- (b) apply the property, money, damages, or mesne profits, or any part thereof or income therefrom for the maintenance or education (including past maintenance or education) or the advancement or benefit, in such manner as the Public Trustee in his absolute discretion thinks fit, of the wife or husband or children of the owner of the property or any other person who is or was dependent upon the owner;
- (c) complete, carry out, perform, or enforce in such manner as he may think fit any contract affecting the property or entered into by the owner, and exercise any powers conferred by any such contract;
- (d) pay, out of money received, advanced, or borrowed by him in exercise of any powers conferred by this Division, any mortgages, charges, or other obligations on or attaching to the property, and any debts or other liabilities of the owner of the property;
- (e) perform or discharge any obligation or duty imposed by any Act or otherwise upon the owner of the property;
- (f) do any act or thing necessary to obtain or perfect the title to the property;
- (g) in the case of land, cut and gather crops growing or situate thereon and erect fences on or around the land or contribute to the erection of any dividing or boundary fences;
- (h) exercise any power of sale or other powers or rights conferred upon the owner by any mortgage, lease, act, or instrument;
- (i) in the name of the owner, or at his discretion in his own name, bring any action or other proceeding relating to the property, and defend, confess, compromise, or submit to judgment in any action, claim, demand, or proceeding relating to the property;

(j) exercise, as if he were the trustee of the property all powers which as trustee he could exercise without the consent of the Court under any Act or law;

(k) exercise in respect of the property any other power that may be conferred on him by the Court.

(2) All deeds and other documents executed by the Public Trustee as manager of any property pursuant to the powers conferred on him by or under this Division shall have effect and may be registered in all respects as if they were executed by the owner of the property.

118e. (1) The Public Trustee is not obliged to take any steps or proceedings to cause himself to be appointed manager of any property under this Division.

Public Trustee to have discretion as to exercise of powers.

(2) Where the Public Trustee is manager of any property under this Division, he shall, subject to any direction of the Court, have a complete discretion as to whether or not he exercises any of the powers conferred on him by or under this Division, and shall not be liable for anything done or omitted to be done by him in good faith in exercise of that discretion or of any such power.

118f. (1) The Public Trustee, as manager of any property under this Division, may apply *ex parte* to the Court for directions concerning the property, or in respect of the management or administration of the property, or in respect of the exercise of any power or discretion vested in him as manager.

Public Trustee may apply to Court for directions.

(2) The Court may order any such application to be served upon such persons as it thinks expedient.

118g. All money for the time being held by the Public Trustee under this Division shall form part of the common fund.

Money to form part of common fund.

118h. (1) All expenditure incurred by the Public Trustee as manager of any property under this Division, and all fees, costs, commission, charges, interest and expenses incurred by or payable to the Public Trustee as manager of any property under this Division shall be a charge upon the property, which charge shall come next in priority to any mortgage or charge to which the property is subject when the Public Trustee becomes manager.

Remuneration and expenses of Public Trustee.

(2) The amount for the time being so charged on the property shall bear interest at a rate fixed from time to time by the Public Trustee.

118i. Where the Public Trustee, as manager under this Division, takes possession of any property or receives or recovers any money, damages or mesne profits in respect of any property, the property, money, damages or mesne profits shall, after payment thereof of all money authorized to be applied, expended or charged by the Public Trustee, be held by him for the owner of the property.

Property of which Public Trustee takes possession to be held for owner.

118j. (1) The Public Trustee shall cease to be manager of any property under this Division upon the happening of any of the following events:—

Termination of managership.

- (a) if the Court so orders on application served on the Public Trustee and made by the owner of the property or by his administrator or duly authorized agent, or by any person having any interest in the property or in any part thereof;
- (b) if the Public Trustee publishes notice in the *Gazette* that he has ceased to be the manager of the property under this Division;
- (c) if the Public Trustee transfers or delivers the property to the owner or his administrator or duly authorized agent.

(2) The termination of the Public Trustee's managership of any property under this Division shall not affect any charge acquired by the Public Trustee under this Division, or the validity of any act or thing done by the Public Trustee while he was manager of the property.

(3) No order shall be made by the Court under this section without the consent of the Public Trustee until the Public Trustee has been paid all amounts to which he is entitled under this Division in respect of all expenditure, fees, costs, commission, charges, interest and expenses, incurred by or payable to the Public Trustee as manager of the property, together with all costs incurred by the Public Trustee of and incidental to the application for the order.

(4) Upon the Public Trustee ceasing to be manager of any property which remains in his name or in his possession, the Public Trustee may transfer or deliver the property to the person entitled thereto.

Transfer of  
unclaimed  
property  
to Crown.

118k. (1) If, after twenty years from the date of the publication in the *Gazette* of the order by which the Public Trustee was appointed manager of any land, no person has established a claim to the land, and the Public Trustee has not become aware of the existence and whereabouts of any person who has a claim to the land—

- (a) where the land has not been sold by the Public Trustee in exercise of the powers conferred on him by this Division, it shall vest in the Crown;
- (b) all money held by the Public Trustee and derived from the land shall be paid into the General Revenue of the State.

(2) If, after seven years from the date of the publication in the *Gazette* of the order by which the Public Trustee was appointed manager of any property other than land, no person has established his claim to the property, and the Public Trustee has not become aware of the existence and whereabouts of any person who has or may have a claim to the property—

- (a) where the property has not been sold by the Public Trustee in exercise of the powers conferred on him by this Division, it shall vest in the Crown;
- (b) all money held by the Public Trustee and derived from the property shall be paid into the General Revenue of the State.

17. The following Part is enacted and inserted in the principal Act after Part IV thereof:—

Enactment of  
Part IVA of  
principal Act.

#### PART IVA

### ADMINISTRATION OF THE ESTATES OF THE MENTALLY ILL AND MENTALLY HANDICAPPED

#### DIVISION I—PRELIMINARY

118l. (1) In this Part, unless the contrary intention appears—

Interpretation.

“the Act” means the Mental Health Act, 1976-1977:

“administrator” means the person appointed under the Act to be the administrator of the estate of a patient:

“patient” means a person of whose estate an administrator has been appointed under the Act:

“proclaimed state” means a country, state or territory declared by proclamation to be a proclaimed state for the purposes of this Part:

“property” means real or personal property.

(2) The Governor may, by proclamation, declare any country, state or territory to be a proclaimed state and may, by subsequent proclamation vary or revoke any such declaration.

#### DIVISION II—GENERAL POWERS OF ADMINISTRATORS

118m. (1) Where a person is appointed the administrator of a patient's estate, the estate shall not vest in him but he shall have the control and management of the estate.

Powers of  
administrator.

(2) Subject to any order of the Court relating to the administration of a patient's estate, an administrator may—

(a) sell either by public auction or private contract—

(i) any personal property of the patient;

or

(ii) any real property of the patient not exceeding twenty thousand dollars in value;

(b) lease or concur in the leasing of any property of the patient;

(c) repair and insure against fire or accident, any of the property of the patient;

(d) pay all rates, taxes, insurance premiums, or other outgoings payable in respect of the patient's property;

(e) surrender any policy of life assurance vested in the patient;

(f) grant powers of attorney to any person in or out of the State to do any act or thing with respect to the property that he has power to do under this section;

(g) institute or defend, in his own name or in the name of the patient, any action, suit or other proceeding and suffer judgment to go by default, or consent to any judgment, decree, or order in the action, suit or proceeding, upon such terms as he thinks fit;

- (h) compromise any claims or demands made against or by or on behalf of the patient or his estate, upon such terms as he thinks fit;
- (i) submit or join in the submission of any claim or dispute to arbitration, and take any action necessary to facilitate the arbitration of any claim or dispute;
- (j) take criminal proceedings concerning the property;
- (k) demand and receive all moneys payable or belonging to the patient and take any action necessary to recover those moneys;
- (l) apply moneys belonging to the patient (whether income or capital) in or towards the payment of any debt, obligation, or liability of the patient, or incurred by the Public Trustee in the exercise of the powers vested in him by this Part;
- (m) surrender, assign or otherwise dispose of, with or without consideration, any onerous property;
- (n) surrender or concur in surrendering any lease on behalf of the patient;
- (o) accept a surrender of any lease on behalf of the patient;
- (p) perform contracts entered into by the patient;
- (q) bring lands under the provisions of the Real Property Act, 1886-1975;
- (r) apply, in his discretion, and in such manner and to such extent as he thinks fit, any property for the maintenance of the patient, or the spouse or putative spouse of the patient, or for the maintenance, education, or advancement of the children or grandchildren of the patient, or, in the event of the death of the patient, for the payment of the expenses of his funeral;
- (s) take up any rights to the issue of new shares to which the patient becomes entitled;
- (t) carry on any trade or business of the patient;
- (u) expend money (not exceeding two thousand dollars) in the improvement of any property by way of building or otherwise;
- or
- (v) exercise any other powers conferred on the administrator by the Court.

#### DIVISION III—PROVISIONS RELATING TO ADMINISTRATORS OTHER THAN THE PUBLIC TRUSTEE

Statement as to estate.

118n. (1) Every person, other than the Public Trustee, appointed under the Act as the administrator of the estate of a patient, shall provide the Public Trustee, at such times and in such form as the Public Trustee directs, with a statement of—

- (a) the property comprising the estate;
- (b) the condition of the property;
- (c) the manner in which the property has been administered and applied;
- and
- (d) such other particulars relating to the estate as the Public Trustee directs.

(2) Every statement shall be verified by the statutory declaration of the administrator, and shall be supported by such other evidence (if any) as the Public Trustee may require.

(3) If an administrator fails to comply with this section, or a direction or requirement of the Public Trustee made in pursuance of this section, he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

#### DIVISION IV—RECIPROCAL POWERS OF THE PUBLIC TRUSTEE

118o. If an authority invested by the laws of any proclaimed State with the custody or administration of the estate of a person of unsound mind—

Provision for Public Trustee to administer estates of persons in other parts of the world.

- (a) certifies in writing under his hand to the Public Trustee that that person has property in this State;
- and
- (b) by instrument in writing under his hand authorizes the Public Trustee to administer the property of that person within this State,

the Public Trustee shall have and may exercise in respect of that property all the powers that he could exercise if he were the administrator of the estate of that person.

#### DIVISION V—GENERAL AND MISCELLANEOUS

118p. (1) If an administrator, trustee or guardian is unable to exercise a power vested in him or consent to any act or thing because he is of unsound mind any person interested in the exercise of that power or the giving of that consent may apply to the Court for an order under this section.

Exercise of powers vested in person of unsound mind.

(2) The Court may authorize and direct the administrator of the estate of the administrator, trustee or guardian (or such other person as the Court thinks fit) to exercise that power or give that consent in such manner as the Court directs.

118q. (1) Subject to subsection (2) of this section a contract entered into by a person while his estate is subject to administration under this Part is voidable at the option of the administrator.

Limitation of contractual powers of person of whose estate an administrator appointed.

(2) A contract shall not be avoided by the administrator if the other contracting parties did not know and could not reasonably be expected to have known that the person with whom they contracted was of unsound mind.

(3) The Court may, by order, exempt a contract from the operation of this section if the Court is satisfied that the contract is for the benefit of the person whose estate is subject to administration and that he has an adequate understanding of his obligations under the contract.

Commission payable to administrator.

118r. The commission and expenses payable to an administrator under this Part shall be determined—

- (a) in accordance with the regulations;
- or
- (b) by the Court.

Repeal of s. 119a of principal Act and enactment of section in its place.

18. Section 119a of the principal Act is repealed and the following section is enacted and inserted in its place:—

Certificate by Public Trustee of appointment to act.

119a. A certificate under the hand and seal of the Public Trustee certifying that he has been appointed, or otherwise empowered, to act in any specified capacity shall, in the absence of proof to the contrary, be accepted as proof of the matter certified in any legal proceedings.

Enactment of ss. 127 and 128 of principal Act.

19. The following sections are enacted and inserted in the principal Act after section 126 thereof:—

Restraint upon exercise of rights of retainer and preference.

127. (1) No right of retainer or preference shall be exercised by the executor or administrator of the estate of a deceased person unless the executor or administrator has reasonable cause to believe, and does believe, that the assets or the estate are sufficient to satisfy its liabilities.

(2) Where a right of retainer or preference has been exercised in contravention of this section, the Court may—

- (a) set aside any payment of money or disposition of property that has been made in contravention of this section;
- and
- (b) make any other order that may be just in the circumstances.

(3) This section does not prevent an executor or administrator from exercising a right to retain assets from the estate of a deceased person where the extent to which he exercises that right is not such as to confer upon him a preference over other creditors of the estate.

Power of Public Trustee to move for attachment of an administrator.

128. Where, in the opinion of the Public Trustee—

- (a) grounds exist for the attachment of an administrator;
- and
- (b) it is necessary or desirable for the purpose of protecting the interests of any person that proceedings for the attachment of the administrator be instituted,

the Public Trustee may institute proceedings for the attachment of the administrator.

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

K. D. SEAMAN, Governor