



ANNO QUINTO

GEORGII V REGIS.

A.D. 1914.

No. 1174.

An Act to further amend "The Administration and Probate Act, 1891," and for other purposes.

[Assented to, November 19th, 1914.]

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

1. (1) This Act may be cited alone as "The Administration and Probate Amendment Act, 1914." Short titles.

(2) "The Administration and Probate Act, 1891" (hereinafter called "the principal Act"), "The Administration and Probate Amendment Act, 1903," "The Administration and Probate Amendment Act, 1904," and this Act, may be cited together as "The Administration and Probate Acts, 1891 to 1914." No. 537 of 1891.
No. 816 of 1903.
No. 854 of 1904.

2. This Act is incorporated with the other Acts mentioned in section 1 hereof, and those Acts and these Acts shall be read together as one Act. Incorporation with other Acts.

3. (1) The definition of the expression "estate" in section 4 of the principal Act is amended by the addition thereto of the following words:— Amendments of section 4 of principal Act—
Definition of "estate."

"and shall include any money or other property subject to any trust and received by the Public Trustee under order of the Court."

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Definition of "personal representative."

(2) The definition of the expression "personal representative" in section 4 of the principal Act is amended by the addition thereto of the following words, namely:—

"and shall, as regards any deceased person, include the Public Trustee when an order has been made under this Act authorising him to administer the estate of such person, notwithstanding that letters of administration may not have been granted to the Public Trustee."

Amendment of section 7—Acting and Deputy Public Trustees.

4. Section 7 of the principal Act is amended by substituting the word "Probates" for the word "Probate" in subsection (4) thereof, and inserting, after the word so substituted, the words "and Acting or Deputy Public Trustees."

Amendment of section 49—Action may be instituted to recover money.

5. Section 49 of the principal Act is amended by striking out the words "to recover any money from the estate of the deceased or" in the fourth line of subsection (1) thereof.

Amendment of section 51—Proceedings for executors and others to obtain administration after Public Trustee ordered to administer.

6. Section 51 of the principal Act is amended—

(a) by striking out the words "on being satisfied that the creditors, if any, of the deceased have been fully paid", in the second and third lines thereof;

(b) by inserting after the word "deceased", in the fifth line thereof, the words "or that letters of administration with such will annexed be granted to any person entitled to such letters"; and

(c) by inserting after the word "probate", in the tenth line thereof, the words "or letters of administration".

Amendment of section 52—Public Trustee may be appointed attorney for absent executor.

7. Section 52 of the principal Act is amended by the addition thereto of the following paragraph:—

The Public Trustee may be appointed by power of attorney so to act, and probate or administration may be granted to him accordingly.

Amendment of section 88—Investment of trust fund by Public Trustee.

8. Subsection (2) of section 88 of the principal Act is further amended by the addition thereto of the following subdivision, namely:—

(e) In any investments in which a trustee is by section 4 of "The Trustee Act, 1893," or by any amendment of that section or any enactment substituted therefor, authorised to invest trust funds.

No. 586 of 1893.

Public Trustee may take mortgage for part of purchase money.

9. The power conferred on a trustee by section 2 of "The Trustee Act, 1907," is hereby conferred on the Public Trustee.

Cf. Act 944, 1907, s. 2.

10. Section

*The Administration and Probate Amendment Act.—1914.***10.** Section 95 of the principal Act is amended—

- i. by the insertion after the word “estate” in the fourth line thereof of the words—“or a next friend or guardian *ad litem* to any person for the purposes of any proceedings in any Court”; and
- ii. by the addition at the end thereof of the words “or next friend or guardian *ad litem*.”

Amendment of section 95—
Court may appoint Public Trustee to be next friend or guardian *ad litem*.

11. Subsection (3) of section 100 of the principal Act is repealed and the following subsection is enacted and substituted in the place thereof, namely:—

Amendment of section 100—
Charges for carrying on a trust may be reduced.

(3) Notwithstanding anything in this section, the Public Trustee, with the approval of a Judge, may, as regards any estate coming under his control—

- (a) fix the commission to be charged at a less rate than that contained in the said Second Schedule, or than that for the time being in force as regards estates generally, or
- (b) refrain from charging any commission.

12. Section 2 of “The Administration and Probate Amendment Act, 1904,” is amended by the following addition thereto, namely:—
“1891 and 1904.”

Amendment of section 2 of amending Act 854 of 1904—
Short title.

13. Section 4 of “The Administration and Probate Act, 1904,” is amended—

Amendment of section 4 of Act 854 of 1904—
Court may grant administration to Public Trustee in certain cases.

- i. by inserting after the word “Court” in the second line thereof the words—

“may order that administration, either with or without a will annexed, be granted to the Public Trustee, or”;

- ii. by inserting after the word “kin” in the third line of subdivision i. thereof the words “resident therein”; and
- iii. by substituting the following subdivision for subdivision iii. thereof, namely:—
 - iii. Where any executor or any person entitled to administration with the will annexed, or the husband or widow, or any of the lawful next of kin, requests the Public Trustee, in writing, to apply for such order.

14. In any case such as mentioned in section 6 or 7 of “The Administration and Probate Amendment Act, 1904,” the Public Trustee, if satisfied that the total of the assets in the estate, wherever situated or recoverable, is insufficient for the payment in full of all creditors and all charges provided for by law, may make or receive under such of the said sections as is applicable to the case such payments as appear to be necessary for the due administration of the estate, notwithstanding that the creditors in South Australia or elsewhere have not been paid in full.

Balances of estate may be paid or received under sections 6 and 7 of Act 854 of 1904, notwithstanding deficiency of estate.

15. Section

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Amendment of section 14 of Act 854 of 1904—
Public Trustee may receive properties subject to trusts.

15. Section 14 of "The Administration and Probate Act, 1904," is amended so as to read as follows:—

(1) In addition to the cases provided for by sections 93 and 95 of the principal Act, the Court, in any case in which it sees fit, may, on the application of any person holding any money or other property in trust for any purpose, not being exclusively a religious purpose, make an order authorising the Public Trustee to receive and administer such money or other property.

(2) Such order may be made however the trust may have been created or arisen, whether by or under a will, settlement, or other disposition of property, or otherwise howsoever.

(3) The Court may order that the costs and expenses of and incidental to the application be paid out of such money or property, and, in case the money or property is held in trust for public or charitable purposes, may, if it thinks fit, direct that no Court fees shall be payable.

Catherine Helen Spence and Tom Price Memorial Funds.

16. The receipt and investment by the Public Trustee of a certain sum of Two Thousand Two Hundred and Ten Pounds known as the Catherine Helen Spence Memorial Fund, and of a certain sum of Two Thousand Pounds known as the Tom Price Memorial Scholarship Fund, are hereby validated, and the Public Trustee may continue to hold and administer the said funds as if since the passing of this Act an order had been made under section 13 hereof authorising him so to do.

Provisions as to administrators to apply to Public Trustee when administering under order.

17. When an order has been made under the principal Act authorising the Public Trustee to administer the estate of a deceased person—

i. All the provisions of "The Administration and Probate Acts, 1891 to 1913," as to an administrator, *mutatis mutandis*, shall apply to the Public Trustee, so far as such application is practicable and is not inconsistent with any of the provisions of the said Acts, to the same extent as if administration of such estate had been granted to the Public Trustee; and

ii. For the purposes of any other Act of Parliament, and subject to the provisions thereof, the Public Trustee shall be deemed to be the administrator of such person.

Appointment of Public Trustee by executors, administrators, and trustees.

Cf. N.Z., 159 of 1908, s. 13.

18. (1) With the consent of the Court—

(a) Executors, whether appointed before or after the passing of this Act, may, unless expressly prohibited, appoint the Public Trustee sole executor;

(b) Administrators,

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(b) Administrators, with or without a will annexed, whether appointed before or after the passing of this Act, may, unless expressly prohibited, appoint the Public Trustee sole administrator; and

(c) Trustees, whether appointed before or after the passing of this Act, and whether appointed by or under a will, settlement, declaration of trust, or otherwise howsoever, may, unless expressly prohibited, and notwithstanding the terms of the trust as to the number of trustees, appoint the Public Trustee (if he consents thereto) sole trustee in their place.

(2) Executors whose duties continue in the nature of a trusteeship after their administration is closed shall for the purpose of subsection (1) hereof be deemed to be trustees. Executors deemed trustees.

(3) Where there are more trustees, executors, or administrators than one, any one trustee or executor (whether before or after proving the will), or any one administrator, may apply to the Court to have the Public Trustee appointed sole trustee, executor, or administrator.

(4) All applications to the Court under this section may be by petition, summons, or otherwise; and the Court may make such order as it thinks fit: Provided that, in the case of an application under subsection (3) hereof, the Court shall not appoint the Public Trustee if there is any trustee, executor, or administrator willing, and, in the opinion of the Court, suitable to act.

(5) Where to the appointment of a trustee, executor, or administrator the consent of any person is requisite, and such person refuses to consent to the Public Trustee being appointed, or where the person to consent is an infant, or lunatic, or a person of unsound mind, or is absent from the said State, or is under any other disability, then an appointment of the Public Trustee may be made under this section without such consent.

19. (1) When an estate is in course of administration by the Public Trustee, and any claim is made by any person against such estate, whether as a creditor or beneficiary, the Public Trustee, if in doubt as to the validity of such claim, may institute such inquiries as he thinks proper regarding such claim, and may, by a summons signed by him, require the claimant and any other persons to appear before a Judge at any time and place therein mentioned, and then, or at any adjournment of the application, to answer all questions that may be put to them respectively with reference to such claim: Provided that the Public Trustee shall pay or tender to any person so summoned the same amount as such person would be entitled to if he had been summoned as a witness to the Supreme Court. Public Trustee may hold inquiry as to validity of claim against the estate.

(2) If the claimant, after receiving a summons under this section, fails to attend at the time and place therein mentioned, or at any adjournment

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adjournment of the application, or if he refuses or fails to truly answer any question put to him by or on behalf of the Public Trustee, it shall be lawful for the Public Trustee, by direction of a Judge, either with or without proceeding under subsection (3) hereof, to reject the claim.

(3) If the claimant or any other person, after receiving a summons under this section, fails to attend at the time and place therein mentioned, or at any adjournment of the application, or refuses or fails to truly answer any question put to him by or on behalf of the Public Trustee, he shall, if a Judge so directs, forfeit and pay a penalty not exceeding Ten Pounds, which shall be recoverable in a summary manner before a Special Magistrate or two Justices of the Peace, and sections 115 and 116 of the principal Act shall apply to and in respect of such penalty and the recovery thereof.

Public Trustee may make advances for purposes of administration.

N.Z. 159, 1908, ss. 37 and 38.

20. (1) When the Public Trustee is administering any estate, and there is property vested in him to the credit of such estate, but there is not sufficient money available to make payments required to be made on account of such estate, whether to beneficiaries or creditors, or for expenses of administration, or otherwise, the Public Trustee may, with the approval of a Judge, advance and pay, for or on account of such estate, any sum of money which he is authorised or required to pay: Provided that no greater amount shall be so advanced and paid than the value of the property so vested in the Public Trustee.

(2) The sums so advanced, with interest thereon at a rate to be fixed by the Judge, shall be a first charge upon all the property in the estate.

Certain documents may be deposited with the Public Trustee for safe keeping.

21. The following documents may be deposited for safe custody with the Public Trustee, namely:—

- (a) any will whereof the Public Trustee is appointed the executor or one of the executors:
- (b) any settlement, declaration of trust, or other instrument whereby any trust is declared or created concerning any property of any kind, and the Public Trustee is appointed a trustee or one of the trustees.

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

H. L. GALWAY, Governor.