

Hon. Mr. Reeves.

LUNATICS ACT AMENDMENT.

ANALYSIS.

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A BILL INTITULED

AN ACT to amend "The Lunatics Act, 1882," by conferring upon the Public Trustee certain further and larger Powers than he now possesses. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Lunatics Act Amendment Act, 1895." Short Title.

10 2. For the purposes of this Act, if not inconsistent with the context,— Interpretation.

"The said Acts" means "The Lunatics Act, 1882," and "The Lunatics Act Amendment Act, 1891":

15 "Supreme Court" has the same meaning as that given by "The Lunatics Act, 1882":

"Lunatic" means (but not as limiting the meaning given by "The Lunatics Act, 1882," for the general purposes of that Act) a person found lunatic by inquisition either before or after this Act comes into operation, and includes every person, whether found lunatic by inquisition or not, if detained in any public or private establishment

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or house in New Zealand authorised or used for the reception of lunatics under the provisions of the said Acts, and whether such lunatic is an infant, or under coverture, or not, *and includes a lunatic while absent from an asylum, but not discharged therefrom :*

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“Real property” means lands, tenements, and hereditaments, whether corporeal or incorporeal, and includes chattel interests in land :

“Personal property” means all property of whatever nature not comprised in the preceding definition of real property :

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“Property” includes real and personal property.

ADMINISTRATION OF LUNATIC'S PROPERTY.

Powers conferred on the Public Trustee with respect to lunatics.

3. Notwithstanding anything contained in the said Acts, the Public Trustee shall have and may exercise at his discretion, and without the sanction or order of the Supreme Court, the following powers as regards a lunatic of whose estate the Public Trustee shall be committee or of whose estate there shall be no committee :—

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(1.) Sell the property of such lunatic by public auction or private contract, altogether or in parts, and subject to such conditions as the Public Trustee thinks fit :

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(2.) Demise or lease, or concur in demising or leasing, the property of such lunatic for any term not exceeding twenty-one years, to take effect in possession at a reasonable yearly rent without taking any fine or premium for the making of such lease :

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(3.) Dispose of such lunatic's property or any part thereof by way of exchange for other property of a like nature and tenure situate within the colony, or, where such property shall consist of an undivided share, may concur in partition of such property, and may give or take any money by way of equality of exchange or partition :

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(4.) Repair and insure against fire or accident any property of such lunatic :

(5.) Surrender any policy of life assurance upon such terms as the Public Trustee thinks proper :

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(6.) Pay all rates, taxes, insurance premiums, or other outgoings payable in respect of such lunatic's property, or under any policy of *any kind* of insurance :

(7.) Borrow money upon the security of such lunatic's property, and may secure the payment of such moneys and interest, by mortgage or charge of such lunatic's property or any part thereof with or without a power of sale, and may enter into such covenants, provisions, and agreements on behalf of such lunatic as may be agreed upon between the Public Trustee and the mortgagee. The power to give such security as aforesaid shall extend to give a mortgage or charge for any debt or liability incurred by the lunatic prior to his being found lunatic by inquisition or to his being detained as aforesaid ; and the Public Trustee may pay the interest secured by such mortgage or charge out of the income, or, if such income be insufficient, out of the capital of the lunatic's property :

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- 5 (8.) Execute powers of appointment vested in such lunatic solely or jointly, or give any consent which such lunatic could give if not a lunatic: This power includes the power to appoint or consent to the appointment of new trustees, and includes all cases where the lunatic is a trustee or is entitled to act in any other representative character or capacity :
- 10 (9.) Grant powers of attorney to any person outside or within the colony to do any act or thing with respect to the property of such lunatic which ~~the lunatic if not a lunatic could grant~~ the Public Trustee can do as committee of such lunatic :
- 15 (10.) Bring or defend any action, suit, or other proceeding concerning the property of such lunatic, and may suffer judgment to go by default, or consent to any decree or order in such action, suit, or proceeding upon such terms as the Public Trustee thinks fit :
- 20 (11.) Compromise claims or demands, whether arising from contract, tort, or otherwise, upon such terms as the Public Trustee thinks fit, and submit such claims or demands to arbitration, and make an appointment, do all acts and things necessary to render such compromise or arbitration effectual :
- 25 (12.) Take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company indebted to such lunatic, and may vote and act, either personally or by proxy, at meetings of creditors or shareholders, whether the company be in liquidation or not :
- 30 (13.) Take criminal proceedings touching or concerning the property of such lunatic, and for the purposes of such proceedings the property of such lunatic shall be deemed to be the property of the Public Trustee and in the possession of the Public Trustee :
- 35 (14.) Apply moneys of the lunatic, whether arising from real or personal property, and whether income or capital, in or towards the maintenance of such lunatic, or in payment of any debts, obligations, costs, and expenses of the lunatic, or incurred by the Public Trustee in exercise of the powers and authorities given by the said Acts or this Act :
- 40 (15.) After providing for the maintenance of such lunatic, and the debts, obligations, costs, and expenses to which the lunatic or the lunatic's property is liable, apply any of the moneys coming to his hands, whether arising from real or personal property, and whether income or capital, for the maintenance, education, or advancement of a child or issue of a child of such lunatic, or the maintenance of the husband, wife, father, mother, grandfather, grandmother, brother, sister, nephew, or niece of the lunatic, or of any person for whose support any order could be made against the lunatic if not a lunatic under any law for the time being in force relating to the maintenance of destitute persons :
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- (16.) Carry out contracts entered into by the lunatic prior to his becoming a lunatic.
- (17.) Make and execute any conveyance of property necessary to carry out any of the powers or authorities conferred by the said Act or this Act. Any conveyance so made shall have the same force and effect as if executed by the lunatic if not a lunatic. "Conveyance," unless a contrary intention appears, includes any transfer, mortgage, assignment, appointment, lease, surrender, or other assurance: 5
- (18.) Do all acts and things and execute all such instruments as may be necessary to carry into effect the powers and authorities hereby given as fully and effectually as such lunatic could do if not a lunatic: 10

New paragraph.

Proviso.

Provided always that where the net value of the lunatic's estate, exclusive of debts and claims allowed by the Public Trustee, exceeds five hundred pounds, then the Public Trustee shall only exercise the powers conferred by subsections *one, three, and seven* with the sanction of the Supreme Court. 15

This section shall apply and be deemed to have been in force as from the time when "The Lunatics Act, 1882," came into operation. 20

New clauses.

Public Trustee may apply to Supreme Court with respect to powers conferred by this Act or said Acts over any lunatic's estate.

3A. Without restricting any other powers and authorities conferred by any Act or law, the Public Trustee may apply to the Court upon a statement of the facts and proposal, or upon a summons in Chambers, with respect to the exercise of any of the powers, authorities and discretions conferred by this Act or by the said Acts over any lunatic's estate; and the Supreme Court may on such application as aforesaid, or upon the application of the lunatic or any relative, friend, or creditor of the lunatic, direct that such inquiries be made and notices given as may be deemed advisable, and may make such order in the premises as may be thought proper. 25 30

Section 28 of "The Public Trust Office Consolidation Act, 1894," to apply in certain cases.

3B. The provisions of section twenty-eight of "The Public Trust Office Consolidation Act, 1894," shall extend and apply to the Public Trustee where he is the committee of a lunatic's estate. 35

Investment of lunatic's property.

4. All capital moneys which, arising from the estate of a lunatic, are received by the Public Trustee, shall fall into the Common Fund of the Public Trust Office and be entitled to the guarantee which is afforded to such Common Fund. 40

Committee (other than the Public Trustee) of lunatic's estate to render to the Public Trustee when required statement of lunatic's property.

5. It shall be the duty of every person being committee of a lunatic's estate to render to the Public Trustee at such times as he shall prescribe a statement, in such form as shall be prescribed by the Public Trustee, showing the property of the lunatic of whose estate such person is committee, and how such property has been administered and applied, and the condition thereof, and such other particulars of the property of the lunatic and the administration thereof as may be prescribed by the Public Trustee. Such statement shall be verified by the statutory declaration of such committee in such form as shall be prescribed by the Public Trustee; and if such committee shall fail to render such statement, verified as aforesaid, and in the manner and at the times prescribed, he shall be liable to a 45 50

penalty not exceeding *fifty* pounds for every such offence. If such committee shall fail to render such statement, the Public Trustee may apply to the Supreme Court in a summary manner for an order to compel the rendering of such statement, and the Court may make such

Penalty for non-compliance.

5 order as it thinks fit.

6. The percentage directed to be charged by subsection (b) of section two hundred and fifteen of "The Lunatics Act, 1882," shall, in the absence of any regulations under the said Act, or in so far as such regulations shall not extend, be such as shall from time to time

10 be fixed by the Public Trustee *not exceeding five pounds per centum* either generally as to the estates of lunatics or as to any particular estate, and such percentage shall be a charge upon the lunatic's property and shall be paid by the committee of the estate out of the lunatic's property; and if any committee shall fail to pay such per-

15 centage the Public Trustee may apply in a summary manner to the Supreme Court for an order, and the Court may make such order as it thinks fit.

Public Trustee to fix percentage chargeable under subsection (b) of section 215 of "The Lunatics Act, 1882," in the absence of regulations, or so far as they do not extend.

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20 This section shall apply to the committee of a lunatic's estate appointed before this Act comes into operation and who is committee when this Act comes into operation.

7. Where the Public Trustee is committee of a lunatic's estate, or where there shall be no committee, the Supreme Court shall not have power to remove the Public Trustee from his office of

25 committee or to make any order withdrawing from the Public Trustee any of the powers given by the said Acts or this Act over the lunatic's property without his consent in writing.

Public Trustee's consent necessary to his removal.

8. No person other than the Public Trustee shall be appointed

30 committee of a lunatic's estate except he shall first obtain the consent of the Public Trustee in writing to such appointment; nor shall any person except the Registrar be appointed receiver of a lunatic's property, or be entrusted with the care, custody, or management of a lunatic's property, without the consent in writing of the Public Trustee.

No person to be appointed committee, &c., except Registrar, without Public Trustee's consent.

35 *New clause.*

8A. Notice shall be given to the Public Trustee of any motion to appoint a committee of a lunatic's estate, or to appoint any person, except the Registrar, receiver of a lunatic's property, or to entrust

40 any person, except the Registrar, with the care, custody, or management of a lunatic's property.

Notice to be given to Public Trustee of motion to appoint committee or receiver of lunatic's estate.

9. Upon the death of a lunatic, whether testate or intestate, of whose estate the Public Trustee shall at the time of such death be committee, or where there shall be no committee, then, until probate or administration of the lunatic's estate shall be granted to any other

45 person, the Public Trustee shall be administrator of the lunatic's property; and all acts and things done or omitted by the Public Trustee before he receives notice in writing that probate or administration has been granted shall be as valid and effectual as they would have been if the lunatic had died intestate and the Public Trustee had

50 taken out letters of administration to his estate, or *elected to administer the same*: Provided always that the Public Trustee shall

On death of lunatic Public Trustee to be administrator until probate or administration granted.

not administer a lunatic's property under this section in any case where he has actual personal notice that the lunatic has left a will. But notice to the Public Trustee that the lunatic has left a will, or that probate or administration has been granted to some other person than the Public Trustee, shall not, so far as concerns any person *bonâ fide* dealing with the Public Trustee without actual notice that the lunatic has left a will, or that such probate or administration has been granted, affect such last-mentioned person; and all acts and things done or omitted by the Public Trustee shall, as regards such person, be valid and effectual. 5

Inquisition *de lunatico* on petition of Public Trustee.

10. An inquisition *de lunatico*, under Part VI. of "The Lunatics Act, 1882," may be obtained from the Supreme Court upon the petition of the Public Trustee. 10

No person other than the Public Trustee to be appointed committee until he gives required security.

11. No person other than the Public Trustee shall be appointed committee of a lunatic's estate until he shall give to the Public Trustee such security for the performance of his duties as the Public Trustee may require, or as the Supreme Court in any particular case may order. Where any particular order shall be made by the Supreme Court as to security, the provisions of section two hundred and twenty-six of "The Lunatics Act, 1882," shall be applied as the Supreme Court may order. 15 20

Property of lunatic of whose estate no committee appointed to vest in Public Trustee.

12. With respect to a lunatic of whose estate there shall be no committee, the following provisions shall apply:—

- (1.) The property of the lunatic, wheresoever situate, in or out of the colony, shall vest in the Public Trustee in the same manner as it would have vested if the Public Trustee had been appointed committee of the lunatic's estate by the Supreme Court: 25

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- (2.) The Public Trustee shall have and may exercise the like powers and functions, and shall be subject to the like duties and obligations, as he could exercise or would be subject to if he had been appointed by the Supreme Court committee of the lunatic's estate. 30

A certificate under hand of Public Trustee to be accepted as sufficient evidence that he is committee.

13. Where the Public Trustee is the committee of a lunatic's estate, or where there is no committee, or where by the said Acts or this Act the Public Trustee is authorised to act as such committee, then a certificate under his hand, and sealed with his corporate seal, certifying that he has been appointed committee or is authorised to act as committee, and stating the date when and how he became such committee or authorised to act as such committee, and the name, residence, and occupation of the lunatic shall, notwithstanding any statute or law to the contrary, be accepted by all Courts officers and other persons, whether acting under any Act or not, as sufficient evidence that the Public Trustee is such committee, or is authorised to act as such committee, without production of any other proof whatever. 35 40 45

Upon the production of such certificate to the District Land Registrar under the "The Land Transfer Act, 1885," the District Land Registrar shall register the Public Trustee as the proprietor of the estate and interest of the lunatic in any property under that Act 50

in respect of which the Public Trustee may apply to be so registered. If any property is subject to the provisions of "The Deeds Registration Act, 1868," such certificate may be registered against the property described therein.

5 14. As to shares, stock, or property in any body, whether corporate or not, or in any association which shall be part of the lunatic's estate,

Shares in companies.

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10 then, notwithstanding any law or provisions affecting the registration of persons holding shares, stock, or property in any representative capacity, the Public Trustee shall be entitled to be registered as the proprietor of such shares, stock, or property in his capacity of committee or acting as committee under the said Act or this Act; but under no circumstances shall the Public Trustee incur any further
15 or greater liability in respect of such shares, stock, or property than to the extent of any assets which at the time of such liability he holds as committee or acting as committee.

20 The Public Trustee upon registration shall for all purposes, excepting as to liability as aforesaid, be deemed to be the registered proprietor of any such shares, stock, or property; and neither the body nor association aforesaid nor any person dealing with the Public Trustee shall be concerned to see or inquire whether any acts, dealings, or transactions by or with the Public Trustee are or are not within his powers.

the provisions of section forty-one of "The Public Trust Office Consolidation Act, 1894," shall apply.