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(Hon. Mr. Vogel.)

Public Trust Office.

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A BILL INTITULED

AN ACT to establish a Public Trust Office.

No. 6—1.

Preamble.	W HEREAS it is expedient to make provision for the custody and management of certain property held in trust within the Colony of New Zealand:	5
	BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—	
Short Title.	1. The Short Title of this Act is “The Public Trust Office Act, 1872.”	10
Interpretation.	2. The word “property” in this Act means every kind of property both real and personal, and includes all income and proceeds accruing therefrom, and every interest therein.	
Public Trust Office.	3. There shall be an office called the Public Trust Office, administered by an officer called the Public Trustee, who shall be appointed and may be removed from office by the Governor in Council.	15
Public Trustee a Corporation sole. Common Seal.	4. The Public Trustee is hereby constituted a Corporation sole for the purpose of this Act, with perpetual succession and a seal of office, which shall be kept and used by the Public Trustee only.	
Public Trustee not to have seat in Parliament.	5. The Public Trustee shall be incapable of having a seat in the Executive Council, or in either House of the General Assembly, or in any Provincial Council, or of entering into any contract with the General or any Provincial Government for any gain or profit, or of engaging in any trade or business except as a shareholder in any public company, or of becoming the trustee executor agent or attorney of any person or persons in respect of any property other than as provided by this Act.	20
Governor may appoint other officers.	6. The Governor may from time to time appoint such officers and servants in the Public Trust Office as may be necessary for the custody and management of the property placed therein, and such officers and servants shall hold their several offices at the Governor’s pleasure.	25
Salary of Public Trustee. And of other officers.	7. The salary of the Public Trustee and of the other officers and servants in the Public Trust Office shall, until the end of the next Session of the General Assembly, be such as the Governor directs and thereafter such as shall be fixed by the General Assembly.	30
Officers to find security.	8. The Public Trustee and any other officer or servant in the Public Trust Office shall give security for the faithful discharge of the duties of his office, in such form by such sureties and to such amount as the Governor directs.	35
Regulations.	9. The Governor may by Order in Council make and from time to time revoke or alter regulations for the conduct of the business in the Public Trust Office, and for determining the duties of the officers and servants employed therein, and for the custody of the property placed therein, and for fixing scales of charges upon such property for the cost of managing the same, and for the receipt and payment of moneys belonging to or accruing from such property, and for keeping rendering and auditing accounts of such moneys, and for directing in what Bank the same shall be kept, and for determining what part of and in what securities such moneys shall be invested, and for the safe custody of such securities: Provided that no such regulation shall be repugnant to any of the provisions of this Act.	40
In cases of doubt, Colonial Treasurer to decide.	10. When any doubt arises in the administration of this Act, or the Regulations aforesaid, or the Orders in Council hereinafter mentioned, or as to the powers or duties of the Public Trustee, or any other person thereunder, the Colonial Treasurer, with the advice of the Attorney-General but not otherwise, shall absolutely determine the same.	45
Public trust property may be placed in Public Trust Office.	11. The Governor may by Order in Council place in the Public Trust Office any property held in trust for the benefit of private persons or public bodies or communities by the Crown or by the	50
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Governor or by officers or trustees appointed by the Governor, in virtue of any Act in that behalf; and from and after the date of any such Order in Council the property to which it relates shall become vested in the Public Trustee, subject to the trusts attaching thereto and to the provisions of this Act for the custody disposal or management thereof, and every such Order in Council shall define the nature and extent of the powers intended thereby to be vested in the Public Trustee in respect to the property to which such Order relates; and when any such property is placed in the Public Trust Office, all the duties powers and responsibilities of the officers trustees or other persons theretofore holding or administering the same shall cease, and such officers trustees or other persons shall forthwith hand over to the Public Trustee all deeds papers and moneys belonging to or relating to such property.

12. The Governor may by Order in Council revoke any former Order in Council placing any property in the Public Trust Office, and may by any such Order revoke or alter the powers vested in the Public Trustee in respect to any such property.

Or removed therefrom.

13. Any private person, public or other company or association, or charitable or other public body within or without the Colony of New Zealand may, subject to the provisions of this Act, place any property belonging to or vested in him or them or within his or their lawful custody or control in the Public Trust Office, by deed or will conveying such property to the Public Trustee upon the trust and for the uses and with the powers in such deed or will expressed, and defining the nature and extent of the powers intended to be vested in the Public Trustee in respect of such property:

Private trust property may be placed in Public Trust Office.

Any building or land society, and any society established under the Acts relating to friendly societies, may by the rules or regulations of such society provide that the property or any part of such society shall be placed in the Public Trust Office, and by such rules or regulations define the trusts and uses upon or for which the Public Trustee is to hold such property, and the powers he is to exercise with regard thereto, and in such case the Committee or other governing body of such society shall obey such rules or regulations, and by an instrument in writing convey such property to the Public Trustee upon the trust and for the uses and with the powers in such instrument expressed, and defining the nature and extent of such powers intended to be invested in the Public Trustee in respect of such property.

Also securities of friendly and other societies.

Provided that nothing in this section shall be deemed to give any such person company or body any further powers of disposing of any such property, or of creating any further powers thereover, or of attaching any other trusts thereto, than he or they might have exercised without this Act.

14. Upon the receipt of any such deed or will or instrument the Public Trustee shall forthwith refer the same to a Board, consisting of the Colonial Treasurer, the Government Annuities Commissioner, the Attorney-General, the Auditor, and the Public Trustee, of whom three shall be a quorum, and which is hereinafter called "the Board;" and if the Board is of opinion that the property intended to be conveyed and the powers intended to be created are duly conveyed and created thereby, and that the property therein referred to may be administered by the Public Trustee in accordance with the conditions of the said deed or will or instrument, with due regard to the public service and to the objects and provisions of this Act, the Public Trustee, being so instructed by the Board, shall indorse thereon a statement of the acceptance thereof. But if the Board shall be of the contrary opinion, then the Public Trustee, being so instructed by the Board, shall indorse thereon a statement of the rejection thereof.

Board to decide whether private property shall be placed in Public Trust Office.

Public Trustee to give notice when any private trust accepted.

15. When any deed or any will in which any executor is appointed other than the Public Trustee is accepted, the Public Trustee shall forthwith send a written notice thereof to each person executing such deed or appointed executor under such will, as the case may be; and when any such deed or will is rejected, the Public Trustee shall forthwith send the same to any person executing such deed, or to any executor under such will, as the case may be; and when a will is rejected in which no executor other than the Public Trustee is appointed, the Public Trustee shall forthwith publish a notice thereof in the *New Zealand Gazette* and in one or more newspapers, and shall give such will to any person legally entitled to demand the same; and when any such instrument as aforesaid by or on the part of any building friendly or other society is accepted or rejected, notification thereof shall be sent to the governing body of such society. 5 10

or rejected.

If rejected powers null and void.

16. When any deed or will or such instrument as aforesaid is rejected by the Public Trustee, such rejection shall, to all intents and purposes, have the effect of a disclaimer by deed by the Public Trustee of the grant devise or power made or given thereby respectively, and of the office of Trustee or Agent under the same respectively, and of all and singular the trusts powers authorities rights and privileges whatsoever under such deed will or other instrument as the case may be. 15 20

Testator may deposit will.

17. Any testator may deposit his will in the Public Trust Office for safe custody, but it shall not be deemed to be received within the meaning of the fourteenth section of this Act until the death of such testator; and if any person shall open any such will when sealed up, or shall cause or direct the same to be opened, before the death of the testator, he shall be liable to a penalty of one hundred pounds, to be recovered in a summary way. 25

Supreme Court may appoint Public Trustee to be Trustee, Guardian, or Committee.

18. The Supreme Court may, in any case in which it might appoint a Trustee or Guardian of any property, or a Committee of any lunatic's estate, appoint the Public Trustee to be such Trustee or Guardian or Committee: Provided that before such appointment be made, the proposal to make such appointment shall be submitted to and approved of by the Board; and upon such appointment being made, the property of which the Public Trustee is appointed to be Trustee, Guardian, or Committee, shall be deemed to be placed in the Public Trust Office without further reference to the Board. 30 35

Property to be managed by Public Trustee, subject to this Act.

19. Every property placed in the Public Trust Office shall be administered by the Public Trustee, and the profits and income accruing therefrom shall be paid or invested, subject to the provisions of this Act and of any Act hereafter to be passed amending the same, and to the Regulations made under the authority thereof, and subject to the trusts attached to each such property severally. 40

Powers of Public Trustee over private trusts may be revoked as in ordinary cases.

20. The powers of the Public Trustee and of all other persons in respect to any such property shall be liable to be revoked or altered in the same manner and to the same extent only as if an ordinary Trustee, Guardian, or Committee, had been originally appointed in lieu of the Public Trustee under this Act. 45

Landed property only disposed of by the Board and under Seal.

21. It shall not be lawful for the Public Trustee to enter into any agreement for the disposal of any landed property in the Public Trust Office except by the written approval of the Board; and every instrument for the disposal of such property shall be executed by the Public Trustee, and sealed with the Seal of the Office, in the presence of any two members of the Board who shall witness the same. 50 55

Board to direct how moneys to be invested.

22. The Board may from time to time direct, in accordance with the Regulations above mentioned, in what securities any part of the moneys in the Public Trustee's Account shall be invested, and the Public Trustee shall thereupon make the investment so directed. 60

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23. It shall not be lawful for the Public Trustee, except by approval of the Board, in writing, to invest any moneys of the Public Trustee's Account in any securities, or to draw any moneys from such Account for the purpose of such investment, nor to sell or otherwise

Public Trustee not to invest moneys without approval of Board.

5 dispose of nor to enter into any agreement for the sale or other disposal of any such securities.

24. All title-deeds relating to property in the Public Trust Office, and all securities in which any part thereof is invested, shall be deemed to be in the joint custody of the Colonial Treasurer, the

Title-deeds and securities to be kept as the Governor directs.

10 Commissioners of Audit, and the Public Trustee, and shall be kept by them in such place and manner and subject to such Regulations as the Governor in Council directs for the periodical inspection and safe custody thereof.

25. Upon petition in that behalf presented to the Supreme Court

Case may be referred to Supreme Court on petition.

15 by any member of the Board or by any person showing to the satisfaction of the Court that he has a direct interest in any property for the time being administered by the Public Trustee, the said Court or any Judge thereof shall have power to summon the Public Trustee and require him to answer the allegations of the petition; and may

20 thereupon, at a hearing to be appointed in that behalf, make such order in relation to the conduct of the Public Trustee as Trustee, Guardian, or Committee, in the matter giving rise to such petition as the said Court shall think fit.

26. For the purposes of any such petition, the said Court or any

Supreme Court may make final orders thereon.

25 Judge thereof may also order the Public Trustee to produce or to pay and deliver over all money books and documents in his possession control or custody, to any person or persons named in any such order.

Judges to make rules.

27. Every petition to the Supreme Court presented under the provisions of this Act shall be presented heard and determined, and

30 all proceedings thereunder shall be had and taken, in accordance with such rules of practice and procedure as shall from time to time be framed in that behalf by the Judges of the Supreme Court, or any three of them.

28. The provisions of "The Trustee Relief Act, 1862," shall, so

Trustee Relief Act to apply.

35 far as the same are not inconsistent with or repugnant to this Act, be deemed to apply to the Public Trustee appointed under the provisions of this Act.

29. All moneys being part of or accruing out of property placed in the Office of Public Trust, and all moneys received by the Public

Money to be paid to "Public Trustee's Account" in Bank.

40 Trustee or any other person on account of the said Office, shall be paid on the same day on which the same is received into such Bank as the Governor in Council directs, to an account called "The Public Trustee's Account," and no moneys shall be withdrawn therefrom except by

45 of the Commissioners of Audit.

30. It shall be the duty of the Bank, at the close of business on each day, to make up the pass-book of the Public Trustee's Account, and to send the same to one of the Commissioners of Audit.

Bank to send pass-book to Commissioners of Audit daily.

31. The Public Trustee shall keep a Cash Account Book, in which

Public Trustee to send cash-book to Commissioners of Audit daily.

50 shall be entered each day all receipts into and payments out of the Public Trustee's Account in the order in which they severally occur, and at the close of business on each day the Public Trustee shall sign the said book and send it to one of the Commissioners of Audit: And the said Commissioner shall forthwith compare the said book

55 with the Bank pass-book, and if any discrepancy appear which is not explained to his satisfaction, he shall forthwith report thereon to the Colonial Treasurer.

32. Whenever the Public Trustee accepts any deed will instrument or appointment as hereinbefore provided, or executes any

Public Trustee to give notice to Commissioner of Audit of deeds &c. and

60 deed or other agreement, whereby any money becomes payable to

agreements by which money is payable to Public Trustee's Account.

the Public Trustee's Account in respect of any property placed in the Public Trust Office, he shall forthwith send a memorial thereof to one of the Commissioners of Audit, setting forth the times at which the persons by whom and the several sums in which such moneys become so payable; and if such Commissioner ascertains that any such moneys are not paid into the Public Trustee's Account when due, and the default therein is not explained to his satisfaction, he shall forthwith report the same to the Colonial Treasurer.

Colonial Treasurer to recover deficiency from Public Trustee or other officer.

33. If at any time it appears to the Colonial Treasurer, upon the report of a Commissioner of Audit, that any moneys have been expended by the Public Trustee which he was not authorized so to expend in the proper administration of the properties committed to his trust, or if it appears that any moneys payable into the Public Trustee's Account have been received but have not been paid into such Account, or if there appears to be any deficiency in the balance in such Account, the Colonial Treasurer shall forthwith call on the Public Trustee to make good the deficiency arising in any such manner, and if the Public Trustee shall not forthwith pay the same into the Public Trustee's Account, the Colonial Treasurer shall immediately recover the same as hereinafter provided :

Provided that if the Public Trustee shall prove that the said deficiency occurred through the default of some other officer, and without his cognizance or instruction, then the Public Trustee shall not be liable, but the Colonial Treasurer shall recover the said deficiency from the officer so defaulting: Provided also that no salary or other moneys due to the Public Trustee or to such other officer shall be paid until any such deficiency for which such Trustee or other officer is liable shall have been made good.

Money in Public Trustee's Account property of the Crown.

34. All moneys lying in or payable into the Public Trustee's Account shall be deemed to be property of the Crown for the purposes of this Act, and shall be recoverable from the person by whom the same are payable by action suit or information in the Supreme Court, in like manner as money due to Her Majesty within the Colony.

Public Trust Office Account.

35. The Public Trustee shall keep a separate account, called "The Public Trust Office Account," which he shall charge with all salaries and other expenses incurred in the general management of the Public Trust Office, and shall credit with the sums payable out of the several properties in the Public Trust Office for the cost of managing the same, and with all fees and other moneys paid into the Public Trustee's Account but not belonging to or forming part of any such property. And he shall keep a separate and detailed account of the receipts and payments made on account of each separate property in the Public Trust Office, and of all moneys invested on account of each such property.

Accounts of each separate property.

Expenses of office and managing properties and profits to be paid out of Public Trustee's Account.

36. The Public Trustee shall pay out of the Public Trustee's Account all such salaries and other expenses in the general service of the Public Trust Office as he shall be authorized to pay by the Colonial Treasurer, and as shall be by law payable, but not otherwise; and he shall pay out of the same Account all current expenses and charges incident to the management of the properties in the Public Trust Office, and all the net profits and income accruing therefrom to the several persons entitled to receive the same, subject to the provisions of this Act and of the Regulations issued under the authority thereof :

Provided that he shall not pay or agree to pay on account of any property in the Public Trust Office, any sum in excess of the amount which is standing in the Public Trustee's Account to the credit of such property.

Deficiency in Public Trust Office Account to be advanced out of Consolidated Fund.

37. If the balance in the Public Trust Office Account is at any time insufficient to meet the charges thereon the Colonial Treasurer may from time to time advance such sums out of the Consolidated Fund as may be necessary to meet such charges: Provided that the total

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amount so advanced in any one financial year does not exceed the sum appropriated by Parliament for such purpose, and provided also that all moneys so advanced are repaid by the Public Trustee to the Consolidated Fund so soon as the balance in the Public Trust Office Account admits of such repayment ; and if the balance in the Public Trust Office Account is more than sufficient to meet the charges thereon, the Public Trustee shall from time to time, at such times as the Colonial Treasurer shall direct, pay the excess into the Consolidated Fund, and moneys so paid in shall become a part of Her Majesty's Consolidated Revenue.

Excess to be paid into Consolidated Fund.

38. The Public Trustee shall as soon as possible after the close of each quarter of a year after the property is placed in the Trust Office, submit to one of the Commissioners of Audit the account for the previous year of each property in the Public Trust Office ; and at the close of each year, after such Commissioner has approved the same, the Commissioner shall send the accounts for such year, together with such report thereon as he shall think fit, to the person or persons by whom the property was placed in the Public Trust Office, or to the heirs or assigns of such persons, as the case may be, or the persons beneficially interested therein, as the case may be.

Auditor to send Public Trustee's accounts to persons concerned.

39. The Public Trustee shall, within twenty days after the close of each financial year, prepare a balance sheet showing the whole receipt and expenditure of the Public Trustee's Account during such year, and therein especially the sums paid into drawn out of and remaining due from the Public Trust Fund, and also the sums invested in any securities as provided in this Act, and further showing, under a separate head, the receipt and expenditure of the Public Trust Office Account, and the advances thereto out of and the repayments into and the balance outstanding due to the Consolidated Fund, and further showing the receipt and expenditure on account of each several property placed in the Public Trust Office by Order in Council, and further showing the aggregate of the receipt and expenditure on account of all properties placed in the Public Trust Office by deed will or appointment or otherwise as hereinbefore provided, but not showing any particulars in respect to each or any of such last-mentioned properties.

Yearly balance sheet.

And the Public Trustee shall send such balance sheet to one of the Commissioners of Audit, who shall forthwith transmit the same, together with such report thereon as he thinks fit, to the Colonial Treasurer, by whom it shall forthwith be laid before the General Assembly if in session, or if not in session, then within ten days after the next meeting thereof.

40. The Public Trustee shall not be liable for any loss which may occur to any property in the Public Trust Office through any act lawfully done by the Public Trustee by virtue of the powers vested in him by this Act or by any Order in Council deed will appointment or otherwise as aforesaid in respect of such property, nor shall such Public Trustee incur any liability by reason of any error in judgment committed in the execution of his trust with respect to any such property. But nothing in this Act shall restrict or annul any rights or remedies which any person would otherwise have, in law or equity, against the Public Trustee or his sureties for the recovery of any loss occurring to any property in the Public Trust Office arising out of the fraud or default or neglect of such Public Trustee in the management or disposal of such property.

Liability of Public Trustee and others.

41. In any case where the Public Trustee, acting under or by virtue of this Act, shall, with intent to defraud, convert or appropriate any property vested in him, or of which he may have the control or disposition, to or for his own use or benefit, or for any other purpose other than the purpose for which the same may be vested in him, or if such Public Trustee shall misappropriate any sum or sums of money which shall be vested in or deposited with him, or which may in any

Moneys fraudulently converted may be repaid out of Revenue of the Colony.

manner come to his hands under this Act, and in any case in which any person having suffered any loss in respect of which he has recourse against the Public Trustee or his sureties under the preceding section shall have been unable to recover such loss from or against such Trustee or his sureties, and in any case whatever in which any person has suffered any loss of or in respect of any property placed in the Public Trust Office, and which loss he would, according to the law and practice of the Supreme Court, have been entitled to have made good by the person holding the position of Trustee, Guardian, or Committee of such property, if the Public Trustee has not been appointed Trustee, Guardian, or Committee thereof, under this Act, then and in any of the said cases the amount of such moneys or the value of any such property or such loss, as the case may be, shall be made good out of the Consolidated Fund, and be paid out of any moneys which shall from time to time be appropriated for that purpose by the General Assembly; and the same may be recovered by the Attorney-General, in the name of the Queen, as a debt due to the Queen by the Public Trustee or other person through whose act neglect or default such moneys have become payable; and if such act neglect or default be that of the Public Trustee, or any person who has given a bond or other security under this Act, then such moneys may be recovered against the sureties, or otherwise enforced against the security given.

Colonial Treasurer to have access to papers in Public Trust Office.

42. The Colonial Treasurer and any officer of the Treasury authorized by him shall have full access to all the accounts documents and papers in the Public Trust Office, and the Public Trustee shall at all times furnish to the Colonial Treasurer all such information as the latter requires.

Auditors same powers as under Public Revenues Act.

43. The Commissioners of Audit shall have, in respect to the Public Trust Office and to all the officers and servants employed therein, all the powers which they possess from time to time in respect to the officers and servants employed in any department of the Government Service.

Audit of Curators' accounts and of accounts of estates of lunatics.

44. The Public Trustee may be appointed under the twentieth section of "The Intestate Estates Act, 1865," to audit the accounts of all the Curators of Intestate Estates or any of them as the Governor thinks fit.

In addition to the annual account of the dealings by Curators with real estates, and the examination and allowance thereof by a Judge of the Supreme Court, provided for by the thirty-third section of the said "Intestate Estates Act, 1865," every Curator shall as to the real estate of each deceased person whose estate he shall have entered upon or managed under the provisions of the said Act, and if the Governor in Council so directs by any general order, make up once in every quarter of a year, on a day to be fixed by the Governor in Council, or oftener if required, for examination and audit by the Public Trustee, an account stating therein in detail the gross receipts and the sums expended under the powers in the said Act in that behalf contained, with explanatory particulars of each item, and such account shall be examined and audited by the Public Trustee, but the passing of such accounts by the Public Trustee shall not prevent such Curator from being liable to any claim which may be made at any time on him in respect of any moneys not accounted for by him.

The Public Trustee may be appointed under the one hundred and forty-sixth section of "The Lunatics Act, 1868," to audit the accounts of Registrars and of the estates of lunatics and lunatic patients.

The audit in this section provided for shall be conducted at such time and place and in such manner as shall from time to time be prescribed by regulations made under this Act for the regulation of the Public Trust Offices.