

LAWS OF FIJI

CHAPTER 64

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CHAPTER 64

PUBLIC TRUSTEE

Ordinance No. 12 of 1968, Act 2 of 1973, 4 of 1976, 24 of 1976

AN ACT TO PROVIDE FOR THE APPOINTMENT OF A PUBLIC TRUSTEE AND TO DEFINE HIS POWERS AND DUTIES

[1st October 1968]

PART I—PRELIMINARY

Short title

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

Interpretation

2. In this Act, unless the context otherwise requires—

1. "agent " means an agent of the Public Trustee appointed under the provisions of this act;
2. "Court" means the Supreme Court of Fiji;
3. "expenses" includes costs and charges;
4. "incapable person" means a person other than a person of unsound mind who, by reason of illness or other infirmity, is incapable of conducting his business or financial affairs and is so certified by a medical practitioner or medical officer;
5. "person of unsound mind" has the same meaning as in the Mental Treatment Act; (*Cap. 113.*)
6. "trust" includes an executorship or administratorship and "trustee" shall be construed accordingly and "trust property" includes all property in the possession or under the control, wholly or partly, of the Public Trustee by virtue of any trust;
7. "private trustee" means a trustee other than the Public Trustee.

Public trustee to be successor in law of District administrators

3. From the commencement of this Act—

1. the office of District Administrator shall be abolished;
2. the Public Trustee shall be deemed to be the successor in law of the District Administrator;
3. all property at the commencement of this Act vested in or held by any District Administrator shall, by virtue of this Act, be transferred to, vest in or be held by

- the Public Trustee;
- (d) without affecting the generality of the foregoing provisions of this section—
4. all estates and property of deceased persons remaining unadministered by any District Administrator before the commencement of this Act shall be administered by the Public Trustee, who shall become entitled to the possession thereof and of all books, accounts, letters, papers and documents of every description used by or in the possession of or under the control of any District Administrator immediately before such commencement; and
 5. the Public Trustee shall become entitled to the possession of all estates and property vested in or held by any District Administrator which he is empowered to take care of, collect, protect, administer or manage, and of all books, accounts, letters, papers and documents of every description used by or in the possession or under the control of any District Administrator immediately before the commencement of this Act;
 6. any reference in any Act, order or document to any District Administrator shall, unless inconsistent with the context or subject matter, be deemed and be taken to refer to and mean the Public Trustee;
 7. any proceeding, application, or cause of action commenced, initiated, pending, or existing by or against any District Administrator before the commencement of this Act shall not abate, be discontinued, or be in any way prejudicially affected by reason of anything contained in this Act, but may be continued, prosecuted and enforced by or against the Public Trustee as it might have been by or against any District Administrator if this Act had not come into force but not further or otherwise;
 8. all acts, matters and things of a continuing nature lawfully made, done, or commenced before the commencement of this Act by or on behalf of any District Administrator shall be deemed to have been made, done or commenced by or on behalf of the Public Trustee.

Public Trustee and agents

- 4.—(1) The Administrator-General of Fiji shall be the Public Trustee.
- (2) The Public Trustee shall be and continue to be a body corporate under the name of the Public Trustee and shall by that name have perpetual succession and a common seal and be capable in law of suing and being sued and of holding and disposing of real and personal property.
- (3) There shall also be an Assistant Public Trustee who shall, subject to and directions given to him by the Public Trustee, have all the same powers, rights and duties as the Public Trustee under this Act. (*Inserted by 2 of 1973 s. 2.*)
- (4) The Public Trustee may appoint any person to act as his agent. At the request of the Public Trustee, any District Officer or any other public officer shall act as such agent, and with, under and subject to such powers, conditions and limitations as are contained in such appointment.
- (5) Every agent appointed by the Public Trustee, not being a District Officer, or other public officer, shall, if required by the Public Trustee, give such security

for the due performance of his duties as the Public Trustee thinks proper and sufficient.

Appointment of Public Trustee in various capacities

5.—(1) Where any person within or outside Fiji now or hereafter, can appoint a trustee, executor, administrator, guardian, next friend, committee, manager, receiver, agent or attorney, the Public Trustee may be appointed.

(2) Subject to the provisions of this Act, the powers, duties, immunities and rights of the Public Trustee under any appointment shall be the same as if the appointment had been of a private person.

PART II—PUBLIC TRUSTEE AS EXECUTOR AND ADMINISTRATOR

Appointment of Public Trustee as executor

6. Whenever the Public Trustee is named as executor in the will of any testator, the Public Trustee may act as executor and apply for and obtain probate, and perform and discharge all the acts and duties of an executor as fully and effectually as any other executor.

Public Trustee may apply for grant in certain cases

7. Where any person has died, testate or intestate, leaving property in Fiji, the Court may, on the application of the Public Trustee, grant probate of the will or letters of administration of the estate of such deceased person when it appears to the Public Trustee—

1. that such person died intestate; or
2. that the deceased, having made a will, has omitted to appoint an executor; or
3. that the person or persons named as executor or executors in the will of the deceased are dead or have renounced probate or are otherwise unwilling or unable to act; or
4. that the deceased has appointed the Public Trustee as executor of his will; or
5. that the whole or any part of the estate of the deceased has been left unadministered and that the executors of the will of the deceased to whom probate has been granted, or the persons to whom a grant of letters of administration to the deceased's estate has been made, are dead or are otherwise unwilling or unable to complete the administration of the estate.

Public Trustee to be preferred to creditor as administrator in certain cases

8. The Public Trustee shall be entitled to a grant of administration of the estate of a deceased person in preference to any creditor applying in that capacity for administration thereof, unless the creditor proves to the satisfaction of the Court that it will be more beneficial to the estate that it should be administered by such creditor.

Public Trustee may be appointed to act by executors and administrators

- 9.**—(1) Any person or the majority of the persons entitled to obtain administration with the will of any testator annexed of the estate of such testator, may authorize the Public Trustee to apply to the Court for and obtain administration with the will annexed of the estate.
- (2) Any person or a majority of the persons named expressly or by implication as executor in any will may, unless expressly prohibited by the will, authorize the Public Trustee to apply to the Court for administration with the will annexed of the estate.
- (3) Any person or a majority of the persons entitled to obtain administration of the estate of any intestate may authorize the Public Trustee to apply to the Court for administration of the estate.
- (4) Any executor who has obtained probate, or any administrator who has obtained letters of administration, notwithstanding that he has acted in the administration of the deceased's estate may, with the consent of the Public Trustee, and after an account of all receipts and disbursements made by such executor or administrator in relation to the estate of the deceased up to the date of such application has been filed and passed by the Court, apply to the Court for an order transferring such estate to the Public Trustee for administration.
- (5) Administration under any of the preceding subsections may be granted upon application to the Court by the Public Trustee.
- (6) Where there are more executors or administrators than one, all of the majority of such executors or administrators may apply to the Court to have the Public Trustee appointed sole executor or administrator.
- (7) All applications to the Court under the provisions of this section may be brought in such manner as may be prescribed, and the Court may and is hereby given jurisdiction to make such order as it thinks fit.
- (8) Where the consent of any person is required to the appointment of any executor or administrator, and any such person refuses to consent to the Public Trustee being appointed, or where the person to consent is an infant, an incapable person or a person of unsound mind or absent from Fiji, then the appointment of the Public Trustee may be made without such consent, if the Court so orders.

Application for removal of executor or administrator of an estate and for administration by the Public Trustee

- 10.**—(1) In any case in which probate or administration of the estate of any deceased person has been granted to any person, the Public Trustee, or any person interested, may apply to the Court for an order for the removal of such executor or administrator, and for administration by the Public Trustee of the estate left unadministered. Applications under the provisions of this section shall be made upon affidavit stating any circumstances from which it appears that it would be beneficial to any person who is or may be interested in such estate, or that the due and proper administration of the estate requires that the executor or administrator should be removed, and that such estate should be administered by the Public Trustee.
- (2) Upon the making of any order under the provisions of subsection (1), the Court may order that any administration bond entered into by the administrator shall be assigned to

the Public Trustee; and the Public Trustee shall thereupon be entitled to sue on such bond in his own name as if the same had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested in the full amount recoverable in respect of any breach of the condition of the said bond.

(3) Where the Public Trustee is appointed executor or administrator under the provisions of this or section 9, the property, rights, powers, authorities, functions and directions vested in and the liabilities properly incurred in the due administration of the estate by the original executor or administrator, as the case may be, shall upon such appointment and without any conveyance, transfer or assignment become and be vested in and transferred to the Public Trustee, who shall have the same privileges, rights, powers, duties, discretions and liabilities as if probate or administration had been granted to him originally.

Election to administer estate not exceeding \$600

11.—(1) Where any person has heretofore died or hereafter dies intestate in or out of Fiji, leaving property in Fiji the gross value of which as estimated by the Public Trustee does not at the time of the election hereinafter mentioned exceed six hundred dollars and no person has taken out letters of administration in Fiji, the Public Trustee may file in the Court an election in writing setting out the name, residence and occupation (so far as then known to him) of the intestate, and the value of the property of the intestate as then known, and electing to administer.

(2) On an election being filed under the provisions of subsection (1) the Public Trustee shall be deemed to be administrator of the whole property of the deceased person in all respects as if a grant of letters of administration had been regularly granted to him.

(3) The Public Trustee shall publish in the Gazette a notice that he has made an election under the provisions of this section and such notice shall be conclusive evidence that he is rightfully entitled to administer.

(4) If after, after filing an election under the provisions of this section, the gross value of the property to be administered is found to exceed the sum of six hundred dollars, the Public Trustee shall, as soon as practicable thereafter, file in the Court a memorandum stating the fact and proceed in the ordinary manner to obtain an order for the administration of the estate.

(5) If, after filing an election under the provisions of this section, the Public Trustee finds that the deceased person who was supposed to have died intestate has died testate, the Public Trustee shall, as soon as practicable, file in the Court a memorandum stating the facts and revoking such election whereupon such election shall be deemed to have been revoked accordingly and the Public Trustee shall file in the Court his accounts of all transactions in the matter of the estate of such deceased person.

Payment to widow, etc., of shares of infant children where net amount is under \$200

12. Where the net amount payable to any infant out of the residue of any intestate estate of which administration has been granted to the Public Trustee is under two hundred dollars, he may pay or cause to be paid the share to which such infant is entitled to any person having the care or custody of such infant without seeing to the application thereof, and without incurring any liability in respect of such payment.

PART III—PUBLIC TRUSTEE AS TRUSTEE

General powers and duties of Public Trustee

13.—(1) Subject to and in accordance with the provisions of this Act, the Public Trustee may, if he thinks fit—

- (a) act as custodian trustee;
- (b) act as an ordinary trustee.

(2) Subject to the provisions of this Act, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of the provisions of this Act and shall have all the same powers, duties and liabilities and shall be entitled to the same rights and immunities and be subject to the same control and orders of the Court as a private trustee acting in the same capacity has, is entitled or is subject under the provisions of any Act now or hereafter in force in Fiji.

(3) The Public Trustee may decline to accept absolutely or may accept on such conditions as he may deem right and proper any trust but he shall not decline to accept any trust on the ground only of the small value of the trust property.

(4) The Public Trustee shall not accept any trust exclusively for religious or charitable purposes.

Public Trustee as trustee.

14. Notwithstanding anything contained in any Act, or the terms of any trust as to the number of trustees, the Public Trustee may, unless expressly prohibited by the terms of the trust, be appointed or become trustee.

Public Trustee may execute powers under Trustee Act

15. In addition to any other powers conferred by this Act, the Public Trustee shall have and may exercise all rights, powers and authorities under the provisions of the Trustee Act. (*Cap. 65.*)

PART IV—PUBLIC TRUSTEE AS CUSTODIAN TRUSTEE

Custodian trustee

16.—(1) The Public Trustee may, if he consents to act as such and whether or not the number of trustees has been reduced below the original number, be appointed custodian trustee of any trust—

1. by order of the Court made on the application of any person on whose application the Court may order the appointment of a new trustee; or
2. by the testator, settlor or other creator of any trust; or

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

(2) Where the Public Trustee is appointed custodian trustee of any trust—

1. the trust property shall be transferred to the custodian trustee as if he were sole trustee and for that purpose vesting orders may when necessary be made under the provisions of the Trustee Act; (*Cap. 65.*)
2. the management of the trust property and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees);
3. as between the custodian trustee and the managing trustees and subject and without prejudice to the rights of any other person, the custodian 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 shall be entitled to take copies thereof or extracts therefrom;
4. the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into Court) unless the matter in which he is requested to concur is a breach of trust or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them;
5. all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee:
6. Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they direct or into such bank to the credit of such person as they may direct and in such case the custodian trustee shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or mis-application thereof;
7. the power of appointing new trustees when exercisable by the trustees shall be exercisable by the managing trustees alone but the custodian trustee shall have the same power of applying to the Court for the appointment of a new trustee as any other trustee;
8. in determining the number of trustees for the purposes of the Trustee Act, the custodian trustee shall not be reckoned as a trustee;
(*Cap. 65.*)
9. the custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage or other matter of relationship or other matter of fact upon which the title to the trust property or any part thereof may depend nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee;
10. the Court may, on the application of either the custodian trustee or any of the managing trustees or of any beneficiary and on proof to its satisfaction that it is the general wish of the beneficiaries or that on other grounds it is expedient to terminate the custodian trusteeship, make an order for that purpose and the Court may thereupon make such orders and give such directions as it may consider necessary or expedient.

PART V—PUBLIC TRUSTEE AS TRUSTEE OF ESTATES OF PERSONS OF
UN SOUND MIND AND INCAPABLE PERSONS

*Power of Public Trustee with respect to estates of persons of unsound mind and
incapable persons*

17.—(1) The Public Trustee shall have the management and care of the property of every person of unsound mind unless or until a committee has been appointed under the provisions of the Mental Treatment Act, and shall have all powers and duties necessary and incident to such management and care.

(Cap. 113.)

(2) The Public Trustee may, upon application to the Court, be appointed to undertake the management and care of the property of any incapable person.

(3) The Public Trustee shall manage and care for any property referred to in either of subsections (1) or (2) in accordance with the provisions of this Act.

Property of persons not guilty by reason of insanity

18. Where any person has, on any criminal trial, been found not guilty by reason of insanity, or has, upon arraignment upon a criminal charge, been found to be of unsound mind so that he is incapable of making his defence, the Chief Registrar of the Court shall report the fact to the Public Trustee, who shall thereupon make inquiry respecting the property of such person, and the Court may, on application by the Public Trustee, on being satisfied of the continued unsoundness of mind of such person, make such orders with respect to the property of such persons, and the application thereof, for the payment of his debts or for his maintenance or benefit, or that of his family, or for carrying on his trade or business as it shall think fit. *(Amended by 4 of 1976 s. 11.)*

Title on purchase from Public Trustee

19. Persons dealing with the Public Trustee in respect of any estate over which he has assumed control under the provisions of this Part shall be as fully protected as if the owner of the estate were a person of unsound mind or incapable person at the time of the dealing, although he is not, in fact, then a person of unsound mind or an incapable person, and a purchaser or mortgagee from the Public Trustee of any real or personal property of a person of unsound mind or an incapable person shall not be bound to inquire as to the Public Trustee's powers so to deal with that property or as to the application of the purchase money.

Payment before discharge in certain cases

20.—(1) If any person of unsound mind is released from a mental hospital upon trial or otherwise under the provisions of the Mental Treatment Act, the Public Trustee may in his discretion pay to the person of unsound mind or to any person on his behalf who gives satisfactory security to the Public Trustee for the proper management and disposal thereof, the whole or any part of the estate of the person of unsound mind.

(Cap. 113.)

(2) The receipt of the person of unsound mind or other person referred to in subsection

(1) shall be an absolute discharge to the Public Trustee, notwithstanding any informality in or about the granting of the release on trial or otherwise.

Payment to discharged patients and to representatives of deceased patients

21.—(1) After the discharge or death of a person of unsound mind or incapable person, the Public Trustee may pay over to him, in the case of his discharge, or to his personal representative, in the case of his death, all moneys standing to the credit of that person of unsound mind or incapable person and may hand over to him or to his personal representative, as the case may be, all other property forming part of his estate.

(2) The receipt of the person of unsound mind or incapable person or his personal representative shall be an absolute release to the Public Trustee notwithstanding any informality in the discharge, or in the mode of obtaining the same.

(3) The Public Trustee may, in the exercise of his discretion, require a discharged person of unsound mind or an incapable person claiming money or property as aforesaid, to obtain the order of the appropriate court.

(4) Where no debt has been proved with respect to the property of a person of unsound mind or an incapable person, or no debt remains unsatisfied and the amount of any money standing to the credit of the person of unsound mind or incapable person, and the value of any other property forming the estate does not exceed in the whole two hundred dollars, the Public Trustee may, in his discretion, after the death of the person of unsound mind or incapable person, pay and hand over such money and property to any person claiming to be entitled in the distribution of his estate, or as a legatee under his will, notwithstanding that letters of administration have not been obtained or the will proved, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Public Trustee may act until he receives notice of death or discharge of person of unsound mind

22.—(1) Notwithstanding the discharge from a mental hospital or the death of a person of unsound mind, the Public Trustee may continue to perform the duties and exercise the powers conferred upon him with respect to the estate of that person until he receives notice of such discharge or death.

(2) On the discharge or death of a person of unsound mind, he or his personal representative, as the case may be, shall be bound by and may take advantage of any act lawfully done by the Public Trustee on behalf of such person as if the act had been done by the person himself while of sound mind.

Notice of application for appointment of committee to be given to the Public Trustee

23. When any application is made to the Court under the provisions of the Mental Treatment Act to appoint any person other than the Public Trustee to undertake the care and management of the property of a person of unsound mind, notice of such application shall be given to the Public Trustee by the person making the same.

(Cap. 113.)

Cessation of powers of Public Trustee

24. The powers, duties and functions of the Public Trustee under the provisions of this Part shall cease—

1. when the person of unsound mind or incapable person dies; or
2. when the Court declares that the person of unsound mind or incapable person has recovered his sanity or is capable of managing his affairs, as the case may be; or
3. upon notice from the superintendent of a mental hospital that the person having been a patient has been discharged.

Delivery out of funds, documents and effects

25. On the death of any person of unsound mind or incapable person whose estate is subject to the control of the Public Trustee or on the supersession or rescission of the relative appointment or order under the provisions of the Mental Treatment Act, or on the cessation of the Public Trustee's powers over the estate of any such person, the Public Trustee may direct and authorize the payment, transfer or delivery of any funds in his custody or under his control belonging to the person of unsound mind or incapable person, or any documents or effects relating to or forming part of his estate deposited in the office of the Public Trustee for safe custody, to the person entitled thereto.

(Cap. 113.)

Public Trustee may open and deliver up will

26. The Public Trustee may, on being satisfied of the death of a person of unsound mind or incapable person, open and read any document deposited with him purporting or alleged to contain any testamentary disposition made by such person, or for the purpose of ascertaining who is therein nominated executor thereof, and whether any direction is contained therein concerning the funeral or place of interment of such person and shall then deliver the document to the executor or to one of the executors therein named, or to some other person, to be dealt with according to law.

**PART VI—LIABILITY OF PUBLIC TRUSTEE AND
FINANCIAL PROVISIONS**

Liability of Consolidated Fund

27.—(1) The Consolidated Fund shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge except where the liability is one to which neither the Public Trustee nor any of his officers or agents has in any way contributed and which neither he nor any of his officers or agents could by the exercise of reasonable diligence have averted and in that case the Public Trustee shall not nor shall the Consolidated Fund be subject to any liability.

(2) All sums payable in pursuance of the provisions of this section out of the Consolidated Fund shall be charged on and issued out of that fund.

Liability of Public Trustee

28. Neither the Public Trustee nor any agent shall be personally liable to any person in respect of goods or chattels in the possession at the time of his death of any person whose estate shall be administered by the Public Trustee, which goods or chattels shall be sold by the Public Trustee or such agent, unless the Public Trustee or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of the person whose estate is being administered by him. Neither the Public Trustee nor any agent shall be liable for any act done by him bona fide in the supposed and intended performance of their duties, unless it shall be shown that such act was done not only illegally, but wilfully or with gross negligence:

Provided that, in the case of any sale by the Public Trustee or any agent of goods or chattels belonging in fact to any third person, the amount realised by such sale thereof shall be paid over to the owner upon proof by him of such ownership unless the same shall have already been applied in payment of the debts of the deceased or shall have been distributed according to any will of the deceased in the ordinary course of administration whilst the Public Trustee or agent was in ignorance and without actual notice of the claim of such person to the goods or chattels sold.

Payment of expenses incurred by Public Trustee

29. In addition to any charges otherwise prescribed, all expenses incurred by or on behalf of the Public Trustee relating to the maintenance of a person of unsound mind or incapable person or the management or administration of any trust, estate or property, shall be charged against and be payable out of that trust, estate or property.

Public Trustee funds to be Government property

30. Moneys in or payable into the Public Trustee's account by the Public Trustee or any officer, servant or person acting or presuming to act under the authority of this Act shall be deemed to be property of the Government of Fiji for the purpose of this Act and shall be recoverable in like manner as money due to the Crown,

Disposal of unclaimed property

31. The Public Trustee shall, on or before the 31st day of March in each year cause all property which on the first day of that month has been in the hands of the Public Trustee on behalf of any trust or estate under administration by him for a term of six years next preceding and in respect whereof the Public Trustee has caused an advertisement to be published at least twice at intervals of fourteen days in a newspaper published and circulating in Fiji and the Public Trustee has no information or knowledge of the existence of any person entitled in distribution or claiming so to be—

1. if such property consists of money, to be paid into the Consolidated Fund;
2. if such property consists of personality other than money, to be disposed of by public auction and pay the proceeds of such sale, less the amount of the auctioneer's fee, commission and all other expenses in connexion therewith, into the Consolidated Fund;

3. if such property consists of land, to be transferred to the Director of Lands whereupon such land shall become Crown land subject however to any leases or other encumbrances which may have been granted in respect of such land by the Public Trustee in the course of the administration thereof, which encumbrances shall remain of full force and effect as though they had been granted by the Director of Lands

Audit

32. The accounts of all estates and properties controlled or managed by the Public Trustee shall be audited by the Auditor-General.

PART VII—VACANT ESTATES

Court may authorize Public Trustee to enter into possession of vacant estates

33. The Court may, upon motion by the Public Trustee supported by the affidavit of any public officer or other responsible person whom the Court may consider from the nature of his duties or position to be well informed of the circumstances, notice of which motion shall be advertised by publication at least twice at intervals of fourteen days in a newspaper published and circulating in Fiji, grant authority to the Public Trustee to enter into possession of the real and personal property of any person absent from Fiji who has left no legal representative therein holding his power of attorney or otherwise authorized by him to deal with his estate within Fiji.

Absentees

34.—(1) No person shall be deemed to be absent from Fiji under the provisions of section **33** who has temporarily left Fiji on business or pleasure and who may reasonably be presumed to have an intention of returning to take care of his property, but those only shall be deemed to be so absent whose estates the Court shall be satisfied have been abandoned.

(2) For the purposes of this Part, a person who has died having left no personal representative in Fiji shall be deemed to be an absent person.

Issue of certificate of title to Public Trustee

35. Upon presentation of an office copy of the order of the Court, the Registrar of Titles shall register the same in the manner required by the Land Transfer Act or by any Act repealing and replacing such Act for the registration of transfers ordered by the Court and shall issue a certificate of title in favour of the Public Trustee in his capacity as administrator as the registered proprietor of the lands belonging to such absent person.

(Cap. 131.)

Fees and expenses to be defrayed from personality

36. Any fees or expenses in connexion with the application to the Court, the registration of the order of the Court and the issue of the certificate of title and all other expenses in connexion therewith and in connexion with the administration of the real and personal

property of the absent person shall be paid out of the personal estate of such absent person, if any, but if there is no personality or if the personality is not sufficient to meet such payments, such fees or such part of them as shall not be met out of the personality shall be paid out of the Consolidated Fund and charged against the estate.

Disposal of property of absent person

37. Upon the Public Trustee entering into possession of the real and personal property of any such absent person, the administration thereof shall be undertaken by him, but if the absent person or anyone claiming in his right makes no claim to such property within a period of six years from the date of the order of the Court made under the provisions of section 33 in respect of such property the Public Trustee shall cause an advertisement in respect of such property to be published at least twice at intervals of fourteen days in a newspaper published and circulating in Fiji and if the absent person or anyone claiming in his right makes no claim to such property within a period of three months from the last of such advertisements the Public Trustee shall cause such property—

1. if money, to be paid into the Consolidated Fund;
2. if personality other than money, to be disposed of by public auction and pay the proceeds of such sale, less the amount of the auctioneer's fee, commission and all other expenses in connexion therewith, into the Consolidated Fund;
3. if land, to be valued by an independent valuer and to be transferred to the Director of Lands whereupon such land shall become Crown land subject however to any leases or other encumbrances which may have been granted in respect of such land by the Public Trustee in the course of the administration thereof, which encumbrances shall remain of full force and effect as though they had been granted by the Director of Lands.

Absent person may claim within ten years

38. At any time within ten years after the date of payment of any moneys into the Consolidated Fund or the transfer of any lands to the Director of Lands, as the case may be, under the provisions of section 37, the absent person or his representative shall have the right to claim the amount of any such sum paid on account of the estate of such absent person into the Consolidated Fund together with the amount of the valuation of any such lands obtained under the provisions of paragraph (c) of section 37. (*Amended by 24 of 1976 s. 14.*)

Claim to be made in writing with affidavit

39. The claim for the payment of any amount referred to in section 38 shall be made to the Public Trustee in writing and be supported by the affidavit of the claimant showing the facts upon which he relies for proof of his claim and such other evidence as the Public Trustee may require and, if certified by the Public Trustee, such amount shall forthwith be paid without interest and less seven and one-half per cent Government poundage.

Procedure where identity of person is doubtful

40. When the Public Trustee is not satisfied as to the identity of the person claiming or the right of the so-called representative to the estate of the absent person, he may refuse to certify the claim until the claimant has obtained a judgment of some competent court in his favour. The nominal defendant in such action shall be the Public Trustee, but when the action has been decided against the nominal defendant no costs shall be granted against him or the Government.

After ten years no claim for repayment to be entertained

41. After the expiry of the term of ten years referred to in section **38**, no claim for the repayment of any amount paid into the Consolidated Fund on account of the estate of any absent person, or for the amount of the valuation of any lands transferred to the Director of Lands under the provisions of paragraph (c) of section 37, shall be entertained nor shall it be competent for any court of law to hear such claim, but the said amount shall be held and taken to have become the property of the Crown.

PART VIII—MISCELLANEOUS

Inspection of documents, etc., and secrecy

42.—(1) Upon an application in writing by or with the authority of any person interested in any estate the Public Trustee shall—

1. permit the applicant or his barrister and solicitor or other authorized agent to inspect and take copies of any entry in any register relating to the estate, and, so far as the interest of the applicant is or may be affected thereby, of any account, notice or other document in the custody of the Public Trustee; and
2. at the expense of the applicant, supply him or his barrister and solicitor or other authorized agent with a copy of any such entry, account or document as aforesaid, or of any extract therefrom; and
3. give to such applicant or his barrister and solicitor or other authorized agent such information respecting the estate and the trust property as is reasonably requested in the application and is within the power of the Public Trustee.

(2) Subject to the provisions of subsection (1), the Public Trustee, his officers and agents, shall observe strict secrecy in respect of every trust or estate in the course of administration by him.

No bond by Public Trustee

43.—(1) No bond or other security shall be required from the Public Trustee in relation to his appointment to or acting in any office or capacity pursuant to this Act.

(2) Notwithstanding any Act, rule or practice to the contrary, it shall not be necessary for the Public Trustee to file any accounts in the Court.

Public Trustee may sue himself in different capacities

44. Notwithstanding any rule of law or practice to the contrary, the Public Trustee acting in one capacity, may commence proceedings in his corporate name against himself acting in another capacity:

Provided that in every such case the Public Trustee shall obtain the directions of the Court as to how the opposing interests are to be represented.

Deposit of wills

45.—(1) Any testator may deposit his will in the office of the Public Trustee for safe custody or for acceptance or rejection by him, after death.

(2) Any person who has in his custody or control any will of any person of unsound mind, or incapable person, may deposit the same in the office of the Public Trustee for safe custody.

(3) If the will is deposited for safe custody then, after the death of the testator, the Public Trustee shall deliver the same to such person as the testator may have directed in writing or, in the absence of such direction, to such person as the Public Trustee thinks entitled thereto.

Inquiries as to property

46.—(1) The Public Trustee shall be entitled to require all persons to deliver, convey, transfer or assign to him all property to which he is entitled.

(2) For the purpose of ascertaining whether any person is possessed of or entitled to any property which should be so delivered, conveyed, transferred or assigned, the Public Trustee may institute such inquiries as he thinks proper, and may, by summons, require any person to appear before him and answer all questions that he may put to such person with reference to any property.

(3) If any person fails so to deliver, convey or transfer any property as required by the Public Trustee, or if the procedure in subsection (2) provided fails to elicit the particulars required, the Public Trustee may take out a summons requiring such person, or any person who may be believed to be in possession of information relevant to the fact under investigation, to appear before the Court for the purpose of being examined touching such matters, and to produce any documents.

(4) If the Court is of the opinion that any such person is possessed of or entitled to any property that should be delivered, conveyed, transferred or assigned, the Court may make an order requiring such person to deliver, convey, transfer or assign all such property within such time as it may determine. Such order may be made in the absence of the person summoned, if the summons has been duly served upon him, or the Court is satisfied that reasonable efforts have been made to serve the same.

(5) The Court may order such person to pay all expenses of and incidental to such summons and any examination consequent thereon; and if the Court does not so order, then such expenses shall be paid out of the general funds of the estate concerned in priority to all other claims, or if the Court so orders, out of any particular portion of such funds.

(6) Any person who, without valid excuse, fails to attend pursuant to such summons, or who, upon attending, refuses to be sworn or neglects to answer any relevant question put

to him by or on behalf of the Public Trustee, or who having been summoned to produce any document, fails to produce the same without valid excuse, or, if so required by the Court, to hand such document over to the Public Trustee, or who disobeys any order made by the Court upon the hearing of such summons, shall be guilty of contempt of Court, and the Court may make an order for the arrest of such person and his imprisonment either for such period as the Court thinks fit or until he has purged his contempt to the satisfaction of the Court. The Court may also order such person to pay the expenses of such proceedings.

(7) Any person wilfully neglecting to comply with the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding four hundred dollars.

(8) In this section the term "document" includes books, papers, deeds, documents and any writings whatsoever.

Public Trustee may take opinion of Court

47.—(1) The Public Trustee may, *ex parte*, take the opinion or obtain the direction of the Court upon any question, whether of law or of fact, arising under this Act, or in the course of his duties, or with respect to the exercise of any of the powers conferred upon him by this Act.

(2) Any such question shall be submitted to a judge in such manner and at such times as he may direct and shall be accompanied by such statement of facts, documents and other information as he may require, and the Public Trustee or anyone authorized by him shall, if the judge so desires, attend upon him at such time and place as the judge may appoint. The judge may, before giving his opinion or direction, require the attendance of or communication with any person interested in the estate, but no such person shall have a right to be heard unless the judge otherwise directs.

(3) The judge shall give his opinion or direction to the Public Trustee who shall thereupon act in accordance with such opinion or direction, and shall, upon the request in writing of any interested person, inform him of the substance of such opinion or direction.

Certificate of Public Trustee evidence

48. A certificate under the hand of the Public Trustee and sealed with his seal, certifying the nature of his appointment or authority in relation to any trust or estate in the course of administration, and any facts on the happening of which such appointment or authority was made or granted, shall be accepted by all courts, officers and other persons as sufficient evidence of all the facts set out therein without production of further proof.

Searches, etc., by Public Trustee

49. The Registrar of Titles, the Director Lands, the Director of Mineral Resources, the Registrar of Companies, every officer of the Supreme Court and all public officers entrusted with the keeping of public records shall permit the Public Trustee and any officer authorized by him in that behalf, free of charge, to make searches, to obtain valuations of, and to make copies of or extracts from any document of title or records in the department or registry relating to any property or estate in which the Public Trustee is or may be interested.

Fees and commissions deemed testamentary expenses

50. The fees and commission charged by the Public Trustee shall be deemed to be testamentary expenses.

Public Trustee to have lien on policy moneys for premiums

51. Where the Public Trustee pays any premiums in respect of any policy of insurance, he shall have a lien on the policy moneys for the amount of the premium so paid, together with interest thereon:

Provided that, where such policy moneys are due to be paid otherwise than to the Public Trustee, such lien shall not be exercised unless notice thereof shall, before payment of the policy moneys, have been served by registered post upon the insurers.

Rules

52. The Minister may make rules for—

1. prescribing forms and scales of fees; and
2. generally making provision for the better carrying out of the purposes of this Act.

Controlled by Ministry of the Attorney-General

CHAPTER 64

PUBLIC TRUSTEE

SECTION 52—PUBLIC TRUSTEE REGULATIONS

[Rules 21st August, 1968, 16th October, 1968]

(Made by the Governor in Council)

Short title

1. These Regulations may be cited as the Public Trustee Regulations.

Fees

2. The fees to be paid to the Public Trustee in respect of the services rendered by him under the provisions of the Act shall be the fees set out in the Schedule.

SCHEDULE

A. ACCEPTANCE FEES—

1. Estates of deceased persons—

(a) on the first \$20,000 of the gross value of the estate2½%

(b) on any sum in excess of \$20,0002%

2. Estates of persons of unsound mind and incapable persons—

(a) on the first \$20,000 of the gross value of the estate 1½%

(b) on any sum in excess of \$20,000 1%

3. Other trust estates—

(a) on the first \$20,000 of the gross value of the estate 1½%

(b) on any sum in excess of \$20,000 1%

B. INCOME FEES—

(a) On bank interest, interest on bank fixed deposits, sugar cane proceeds or maintenance collected and disbursed under any court order..... 1% on the income received subject to a minimum of \$1.

On other income5% on the income received subject to a minimum of \$2.

C. INVESTMENT FEES—

(a) On purchase, sale or transfer other than savings bank deposits and fixed deposits with banks..... 1%

(b) On savings bank deposits or fixed deposits with banks ½%

D. REALIZATION FEES—

Other than on repayment of principal moneys secured by a mortgage where the Public Trustee is the original mortgagee, in

1. respect of which repayments no fee shall be charged1% on the gross proceeds.
2. DISTRIBUTION FEES1% on the gross value transferred on distribution subject to a minimum of \$2.

F. REGISTRATION AND ENQUIRY—

1. On every entry, extract or copy10c for every 100 words of part thereof.

(b) On searching for and furnishing any information, not less than 25c nor more than \$2.

G. NEGOTIATION—

1. negotiation of a mortgage, to be paid by the mortgagor...1 % on the capital advanced.

H. OTHER MONEYS—

On all moneys received, paid, or otherwise provided 1%

I. GENERAL—

(a) In addition to the foregoing charges, there shall also be chargeable and payable all disbursements by the Public Trustee properly made in connection with the administration of the trust.

(b) No fee shall be charged on withdrawal of fixed deposits or current or savings accounts in any bank.

(c) No fee shall be charged on any pensions or gratuities payable under the provisions of any Act nor on any moneys received under the provisions of the Fiji National Provident Fund Act.

Controlled by the Ministry of Attorney-General
