

No. XXIII.

An Act to amend the law relating to the Insane, and to further amend the “Lunacy Act of 1878,” and to validate certain certificates. [8th June, 1893.]

LUNACY ACT
FURTHER
AMENDMENT.

BE it enacted by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the “Lunacy Act Further Amendment Act of 1893,” and shall be incorporated and read with the “Lunacy Act of 1878,” and the “Lunacy Act Amendment Act, 1881.”

Short title.
Acts incorporated.

2. In this Act the expression “Principal Act” means the “Lunacy Act of 1878”; and the expression “The Master,” if not inconsistent with the subject matter or context, means the Master in Lunacy; “Inspector-General” means Inspector-General of the Insane; the words “insane patient” and “patient,” in addition to the meaning assigned to them by section three of the Principal Act, include a patient while absent from an hospital or licensed house, in a specified place for the benefit of his health, or upon trial, under the provisions of the eighty-second section of the Principal Act; the word “Court” means the Supreme Court of New South Wales; and the word “Judge” means any Judge of the said Court; and the word “ship” means any vessel used in navigation not propelled by oars.

Interpretation.

3. Sections ten, thirteen, one hundred and forty-three, one hundred and forty-four, and one hundred and seventy-eight of the Principal Act are hereby repealed; but the said repeal shall not invalidate or affect anything already done or commenced or contracted to be done.

Repeal.

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Owner, charterer, agent, or master of ship liable for maintenance of any passenger or seaman being insane and a charge upon the public.

4. (I) If the Health Officer, or the Immigration Officer, or the Inspector-General of Police, or the Inspector-General of the Insane certifies to the Master within sixty days after the arrival of any ship at any port in New South Wales, that a passenger or seaman arriving by that ship is insane, imbecile, or idiotic, and has become, or is likely to become, a charge upon the public as an inmate of a reception house or hospital for the insane, it shall be lawful for the Master thereupon to require the owner, charterer, agent, or master of that ship to execute, with two sufficient sureties, jointly and severally, a bond to Her Majesty in such sum as the Master may determine not exceeding five hundred pounds, conditioned to pay to the Master the maintenance of that passenger or seaman in such reception house or hospital at such rate and for such term as may be determined by the Master; or at the option of the owner, charterer, agent, or master, subject to the approval of the Master, to return such passenger or seaman to the place whence he was shipped.

(II) The sureties shall justify before or to the satisfaction of the Master, and shall by their oaths or affirmations satisfy him that they are respectively resident in New South Wales, and worth treble the amount of the penalty of the bond over and above all liabilities.

(III) Provided that no bond shall be required when the passenger or seaman is, at the date of the arrival of the ship, domiciled in New South Wales; but the onus of proving such domicile as aforesaid shall be upon the said owner, charterer, agent, or master.

Penalty if owner, charterer, agent, or master neglects or refuses to execute bond.

5. If the said owner, charterer, agent, or master neglects or refuses to execute the bond as aforesaid within seven days after being so required, he shall be liable to a penalty not exceeding five hundred pounds, to be recovered summarily before a Police or Stipendiary Magistrate; and the said ship shall not be cleared out until the bond is executed as aforesaid.

Validation of certificates signed by medical officer of reception house.

6. Notwithstanding anything contained in the Principal Act, every certificate heretofore signed by the medical officer of a reception house for the admission of a person into an hospital for the insane or licensed house, shall be and is hereby declared to have been valid and effectual for all purposes.

Medical practitioner shall not sign certificates in certain circumstances.

7. A medical practitioner shall not sign a certificate for the reception of a patient into an hospital for the insane, reception house, or licensed house in any of the following circumstances:—

- (I) Where he has signed the order or request for the reception of that patient into that hospital, reception house, or licensed house.
- (II) Where his father, brother, son, partner, or assistant has signed the order, request, or a certificate for the reception of that patient into that hospital, reception house, or licensed house.
- (III) Where the said medical practitioner, or his father, brother son, partner, or assistant is the superintendent or medical officer of that hospital for the insane, reception house, or licensed house, or a regular professional attendant in that licensed house, or wholly or in part the proprietor, mortgagee, or lessee of that licensed house, or receives a percentage on or is otherwise interested in the payments to be made by or on account of any patient received into that hospital, reception house, or licensed house.

Medical practitioner signing certificate shall not board or attend insane person.

8. If a medical practitioner, or his father, brother, son, partner, or assistant has signed a certificate for the reception of a person into a licensed house, such medical practitioner

- (I) Shall not, by himself or by his servants or agents, receive, or board or lodge, or take the charge of that person in the said licensed house.
- (II)

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- (11) Shall not be the regular professional attendant on that person while under care or charge under such certificate as aforesaid.

9. (1) Any order, request, medical certificate, or other document, by virtue of which an insane person has been received into an hospital for the insane or licensed house, and which is incorrect or defective in any particular, may, with the approval of the Inspector-General, be amended by the person who has signed the same within twenty-eight days after the reception of the insane person. And the order, request, medical certificate, or other document so amended shall thereupon be deemed to have operated and to operate from its original date.

Orders and medical certificates may be amended.

(11) If the order, request, certificate, or document is not so amended, the Inspector-General may order the discharge of the insane person, and that person thereupon shall be discharged accordingly; or he may direct the superintendent of the said hospital or licensed house to obtain a new order, request, certificate, or document which shall be as effectual for all purposes as if it had been obtained, made, and executed previously to the reception of the insane person.

10. In any proceeding taken against a superintendent of an hospital for the insane or for the criminal insane, licensed house, or reception house, or other person authorised by the Principal Act, or by the "Lunacy Act Amendment Act, 1881," or by this Act to take charge of any person as insane, or against any assistant or servant of any such superintendent or person authorised as aforesaid for taking, confining, detaining, or retaking any person as an insane person or patient, the party complained of may plead the general issue, and may under that plea give in evidence the order, request, and certificates, or certificate mentioned in Parts I to VI (inclusive) of the Principal Act in his defence; and the certificate or certificates and the request, or the certificate or certificates and the order (as the case may be) shall be a justification for taking, confining, detaining, or retaking that insane person or patient.

Superintendents, &c., may plead the general issue.

Certificates, &c., a bar to proceedings.

11. (1) No suit or action shall lie against any person for or on account of any act, matter, or thing, done, or commanded to be done by him, and purporting to be done for the purpose of carrying out the provisions of the Principal Act, or of the "Lunacy Act Amendment Act, 1881," or of this Act, if that person has acted in good faith and with reasonable care.

No action to lie against person who has acted in good faith, &c.

53 Vic. c. 5, s. 330.

(11) No such suit or action as aforesaid shall be commenced but within three months after the alleged cause of action, or in the case of a suit or action by a person who has been an insane person or patient, within three months next after the making of a superseding order, or next after the discharge of the patient.

Or where action not commenced within three months.

(111) Proceedings in such suit or action as aforesaid may, on summary application to the Court or a Judge, be stayed upon such terms as to costs or otherwise as the Court or Judge may think fit, if the Court or Judge is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the said proceedings have been commenced after the expiration of the three months aforesaid.

Stay of proceedings.

12. The Colonial Secretary may, by order under his hand, direct the Inspector-General or other fit person to visit any hospital for the insane, or for the criminal insane, reception house, licensed house, gaol, house, or place wherein any insane person, or person represented to be insane, or to be under restraint as insane, is confined, or alleged to be confined, and to inspect and inquire into the state of that hospital, reception house, licensed house, gaol, house, or place, and report to him the result of that inspection and inquiry.

Colonial Secretary may order inspection and report as to any hospital for the insane, &c.

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Court or Judge may order person found or declared to be of unsound mind to be visited.

13. The Court, or a Judge may, by general rule, or special order—

- (I) Direct the Inspector-General or other fit person to visit any person found or declared to be of unsound mind by inquisition or under section ninety-two of the Principal Act, and to make a report in writing to the Court or Judge of the state of mind and bodily health and general condition, and also of the care and treatment of the person visited.
- (II) Direct that such information as may be deemed necessary be given to the person making the visit, as to the nature and extent of the fortune of the person visited, and as to the orders of the Court made in respect thereof.
- (III) Order that any fees and expenses connected with the visit be paid out of the estate of the person visited.

Jury to be of four unless Judge order twelve.

14. In every inquiry or proceeding before a jury the number of the jury shall be four, unless a Judge order a jury of twelve.

Effect of fiat of Judge on a report submitted for confirmation without petition.

15. Where a report is submitted for confirmation without petition, the fiat of a Judge on the report shall give it the operation of an order of the Court made upon petition, subject to such other directions and provisions (if any) as to the Judge may seem fit.

Conveyance of interest of married woman without acknowledgment by her.

16. Where, by the order of the Court or a Judge, any real estate has been or shall be ordered to be sold, mortgaged, or charged, an effectual conveyance, mortgage, or charge may, by direction of the Court or a Judge, be made of any interest, whether legal or equitable, of any married woman in the said estate, being an insane person, without any acknowledgment by her.

Examination of person whose sanity is in question may be dispensed with.

17. On the hearing of a petition, under section ninety-two of the Principal Act, for a declaration that a person is of unsound mind and incapable of managing his affairs, if it appears to the Court or Judge before whom the petition is heard, to be unnecessary or inexpedient that the person whose sanity is in question should be examined by the Court or a Judge, or the jury, the Court or Judge may, in lieu of the examination aforesaid, direct the Master to personally examine the said person and report thereon, or may dispense with any examination whatever.

Expenses of the Master.

18. Expenses incurred by the Master under the provisions of section one hundred and forty of the Principal Act, with the authority thereby prescribed, and whether chargeable to the estate of any insane person or patient or not, shall be defrayed and paid out of the public moneys therein mentioned: Provided that all expenses so chargeable as aforesaid may be repaid by the Master out of any money of the insane person or patient that comes to his hands, or may be recovered by him on summary application to the Court or a Judge, whether such patient has been discharged or not.

Percentage and fees.

19. There shall be paid to the Master a percentage at a rate not exceeding five pounds per centum per annum on the clear annual income of every insane person so found by inquisition or by declaration under the Principal Act, and of every insane patient whose estate is under the care and management of the Master.

Court may make rules as to percentage and fees, payable out of estate of insane persons and patients.

20. (I) The Court may make rules regulating the amount of such percentage as aforesaid, and of the fees payable in proceedings relating to insane persons and patients and their estates, and the mode in which the same shall be ascertained and paid: Provided that a copy of every such rule shall be laid before both Houses of Parliament within fourteen days from the publication thereof, if Parliament be then in Session, or otherwise within fourteen days after the commencement of the next ensuing Session.

(II) The said percentage and fees shall be charged upon and payable out of the estates of such insane persons and patients as aforesaid,

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aforesaid, although before payment the insane person die or a superseeding order be made under the Principal Act, or the insane patient die or be discharged from the hospital or other place in which he is detained.

21. The Master shall have the management and care of the property of every insane patient, and in addition to other powers and duties necessary and incident to such management and care may exercise the following powers and perform the following duties with respect to the estate of every insane patient, that is to say, he may—

Master's powers as to property of patients.

- (a) Receive moneys, rents, incomes, and profits of real and personal property, and distrain for rent.
- (b) Demise land for a term not exceeding five years, at such rent and on such conditions as he may think fit.
- (c) Sell, realise, and mortgage real and personal property where the net value of the patient's estate, exclusive of debts and claims allowed by the Master, does not exceed five hundred pounds.
- (d) Settle, adjust, and compromise a demand not exceeding five hundred pounds made by or against the estate.
- (e) Carry on a business which the patient had carried on, so far as may appear desirable for the purpose of more advantageously disposing of or winding-up the business, or preserving the same until the recovery of the patient.
- (f) Agree to an alteration of the conditions of a partnership into which the patient had entered, for the purpose of more advantageously disposing of his interest therein or terminating his liability.
- (g) Complete a contract for the performance of which the patient was liable, or enter into an agreement terminating that liability.
- (h) Sequestrate the estate of a patient under the provisions of the bankruptcy laws.
- (i) Bring and defend actions and suits on behalf of a patient.
- (j) Bring lands under the provisions of the "Real Property Act."

Provided that the Master may, in his discretion, apply in the manner prescribed in the next section for directions on any of the above matters.

22. The Master may apply to the Court or a Judge upon a statement of the facts and proposal, or upon a summons in chambers, for directions with respect to the exercise of any of the following powers over the estate of an insane patient.

Master may apply to the Judge as to the exercise of certain powers.

- (a) The sale or mortgage of real or personal property where the net value of the patient's estate, exclusive of debts and claims allowed by the Master exceeds five hundred pounds.
- (b) The demising of lands for a term exceeding five years.
- (c) The surrender of a lease.
- (d) The adjusting, settling, or compromising a demand exceeding five hundred pounds made by or against the estate.

And the Court or a Judge may upon such application as aforesaid or upon the application of the patient or any relative, friend, or creditor of the patient, 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.

23. (1) For the purposes of this Act the Master may do such acts and exercise such powers with respect to an estate committed to his management and care as the patient himself could have done if sane, and may, in the name and on behalf of the patient, execute and sign deeds and instruments (including instruments under the "Real Property Act"), transfers of shares, receipts, releases, and other documents, which shall be as effectual as if executed and signed by the patient

Master may execute instruments on behalf of patient. Title of purchaser from the Master

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patient himself while sane, and shall be acted upon accordingly by the Registrar-General and all other persons without any obligation to inquire whether the person upon whose behalf the Master purports to act be a patient or not.

(II) Persons dealing with the Master in respect of any estate over which he has assumed control shall be as fully protected as if the owner of the estate were a patient at the time of the dealing, although he be not, in fact, then a patient; and a purchaser or mortgagee from the Master of any real or personal property of a patient shall not be bound to inquire as to the Master's powers so to deal with that property, or as to the application of the purchase money.

Payments to
Consolidated
Revenue.

24. (i) The Master shall pay into the Consolidated Revenue for the use and benefit thereof, and at such times and in such manner as the Governor in Council may from time to time appoint, all money paid to him for the maintenance of any patient, and all percentages and fees.

Payments to credit
of Trust Fund.
Separate accounts.

(II) The Master shall at such times, and in such manner as aforesaid, pay all other money coming to his hands into the Treasury to the credit of a trust fund, and may withdraw the same or any part thereof and apply it for the purposes in the next section mentioned, or pay it to the Consolidated Revenue for the purposes of maintenance, clothing, medicine, and care in that section mentioned. No money so deposited shall be withdrawn or paid from the Treasury otherwise than by the authority of the Court or by the Master for the purposes aforesaid. A separate account shall be kept by the Master of payments to the credit of the trust fund, and of payments out in respect of the estate of each patient.

Disposition of
money in the hands
of the Master.

25. The Master may apply money coming to his hands in respect of the estate of a patient and standing to the credit of the trust fund towards all or any of the following purposes:—

- (a) The payment of the debts of the patient, and the repayment of expenses chargeable to his estate.
- (b) His maintenance, clothing, medicine, and care, past and future, and in the event of his death, his funeral expenses:
- (c) The maintenance of his wife or any child, parent, or other person dependent upon the patient, or for whose maintenance the patient provided when sane:
- (d) The payment of all proper costs, charges, and expenses incurred in or about the care, protection, recovery, sale, mortgage, leasing, disposal, and management of his estate:
- (e) The preservation and improvement of the patient's estate:
- (f) The investment, in manner hereinafter provided, of money not presently required for the above purposes.
- (g) The payment to a patient or any person under sections twenty-eight and thirty of this Act.

Provided that the Master may report to and apply for the advice and directions of the Court or a Judge upon any of the matters aforesaid. And the Court or Judge may, upon such application as aforesaid, or upon the application of the patient, or any relative, friend, or creditor of the patient, direct such inquiries be made, and notices given as may be deemed advisable, and may make such orders in the premises as may be thought proper.

Powers of Master as
to investment.

26. The Master may invest any money unapplied as aforesaid in Government Debentures of this Colony, by paying the same into the Treasury under such conditions as to interest and otherwise as may be prescribed by any general rules of the Court, or by depositing the same at interest in any incorporated bank in which the shareholders are liable, over and above the amount of their shares in the subscribed capital, to a further liability of not less than the nominal value of their shares.

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27. The Master may, with the leave of a Judge, to be obtained on application in chambers in a summary way, invest any money unapplied as aforesaid upon mortgage of real estate or other security, or in the purchase of land, if such purchase appear to the Judge to be desirable for the purpose of protecting the estate of the patient from injury or deterioration in value, or of increasing the value or facilitating the sale of other lands of the estate; and the Judge may, on the hearing of the application, deal with the same *ex parte*, or require notice to be served on any person.

Investment on mortgage.

28. If any patient be permitted to be absent from an hospital for the insane or licensed house upon trial under the provisions of section eighty-two of the Principal Act, the Master may, in his discretion, pay over to the patient, or to any person on his behalf who shall give satisfactory security to the Master for the proper management and disposal thereof, the whole or any part of the money standing to the credit of the patient in the trust fund, and may hand over to him, or to the person aforesaid, all or any deposit-receipts, debentures, stock, securities, title deeds, documents and chattels forming part of his estate. And the receipt of the patient or person aforesaid shall be an absolute discharge to the Master, notwithstanding any informality in or about the granting of such permission as aforesaid.

Payment over of estate before discharge in certain cases.

29. Where a patient has, before his discharge, made or executed any transfer, sale, alienation, charge, or lease of any property, real or personal, the Court or a Judge may, on application being made by the Master in a summary way, and on notice being given to such persons as the Court or Judge may direct, set aside the said transfer, sale, alienation, charge, or lease, and may make such order in the premises as may be just. And for the purposes of the application the patient shall be *prima facie* deemed to have been insane at the time when he made or executed the transfer, sale, alienation, charge, or lease.

Sale, &c., by patient before his discharge may be set aside.

30. (I) After the discharge or death of a patient, the Master may pay over to him in the case of his discharge, or to his legal personal representative in the case of his death, all money standing to the credit of that patient in the Trust fund, and may hand over to him or to his legal personal representative (as the case may be) all deposit receipts, debentures, stock, securities, title deeds, and chattels forming part of his estate; and the receipt of the said patient or his legal personal representative shall be an absolute release to the Master, notwithstanding any informality in the discharge of the patient, or in the mode of obtaining the same: And the Master may, in the exercise of his discretion, require a discharged patient, claiming money or property as aforesaid, to obtain the order of the Court or a Judge.

Payments to discharge patients and to personal representatives of deceased patients.

(II) Where advertisements for creditors to come in and prove their debts have been duly published by the Master in the course of managing the property of a patient, and no debt has been proved within the time fixed for that purpose, or no debt remains unsatisfied, the Master may, in his discretion, after the death of the patient, pay any sum not exceeding one hundred pounds out of money standing to the credit of the patient in the Trust fund, or may hand over any deposit-receipts, debentures, stock, securities, title-deeds, and chattels not exceeding that value and forming part of the estate of the patient to any person claiming as entitled in the distribution of his estate, or as a legatee under his will, notwithstanding letters of administration have not been obtained or the will proved, and notwithstanding legal proof be not given of the right or title of the person claiming as aforesaid.

Payment of sum not exceeding £100 to representatives or legatees.

31. In addition to the reports, returns, and list required by section one hundred and eighty-one of the Principal Act, every superintendent of an hospital for the insane shall from time to time, without any

Additional reports to be made to the Master in certain cases.

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any unnecessary delay, forward to the Master a report in writing of the death, discharge, removal, absence on trial or for the benefit of his health, return, escape, and recapture of every patient in the said hospital.

Provisions as to personal effects of patient in hands of Master not claimed for two years, and as to moneys standing to credit of patient for a period of six years after his death.

32. (I) All personal effects in the hands of the Master belonging to a patient, and not claimed within two years from the date of the discharge of that patient, may be sold by direction of the Master, and the proceeds of the sale shall be paid by him into the Consolidated Revenue.

(II) All moneys standing to the credit of a patient in the Trust fund at the end of six years from the death of that patient shall be carried to and form part of the Consolidated Revenue.

(III) Provided that nothing herein contained shall affect the right of a person under the disability of infancy, coverture, insanity, or absence beyond the seas to recover the said moneys or the proceeds of the said sale at any time within six years from the removal of that disability.

Master may act until he receives notice of death or discharge of patient.

33. (I) Notwithstanding the discharge or death of a patient, the Master may continue to perform the duties and exercise the powers conferred upon him with respect to the estate of that patient until he receives notice of such discharge or death as aforesaid.

(II) On the discharge or death of a patient, he or his legal personal representatives (as the case may be) shall be bound by and may take advantage of an act lawfully done by the Master on behalf of the patient, as if the said act had been done by the patient himself while sane.

Maintenance.
Discretion of Master to forego arrears or to accept a smaller sum in satisfaction.

34. Where it appears to the Master that payments agreed to be made under the Principal Act or this Act for the maintenance of or otherwise on behalf of an insane person or patient have fallen into arrears through circumstances beyond the control of the person agreeing as aforesaid, it shall be lawful for the Master in his discretion to forego altogether the payment of such arrears, or to accept a smaller sum in satisfaction thereof, or to make such other agreement as he may think just and reasonable.

Justices may make orders for payment of arrears of maintenance.

35. It shall be lawful for the Justices, on complaint made by, or on behalf of the Master, under the provisions of section one hundred and forty-seven of the Principal Act, to order payment of a reasonable sum for or towards the past maintenance of a patient, and for in respect of money expended on his clothing, medicine and care; and such order may be made notwithstanding the patient has been discharged or is dead.

Procedure if amount mentioned in order remains unpaid for six months.

36. If the amount mentioned in an order made by Justices under the provisions of section one hundred and forty-seven of the Principal Act, or of the last preceding section of this Act, remains unpaid for six months from the date thereof, the Master may apply, on notice to the person named in such order as aforesaid, to the Court or a Judge for an order directing payment of the amount due; and upon the hearing of that application the Court or Judge may make such order in the premises, as may seem just for payment of the amount found to be due as aforesaid, together with the costs of the application: Provided that nothing herein contained shall affect any other remedies which the Master may have for enforcing the order of the Justices.