MENTAL HEALTH BILL

Schedule of Amendments referred to in Legislative Council's Message of 10 *December,* 1958, *a.m.*

No. 1.—Page 28, clause 31, line 19. *After* "liable" *insert* **"upon conviction on indictment".**

No. 2.—Page 28, clause 31, lines 20 to 22 inclusive. *After* "or" *insert* **"upon summary conviction to imprisonment for a period not exceeding one year or to".**

No. 3.—Page 35, clause 50, lines 18 to 33 inclusive. *Omit* all words on these lines.

43643 84—

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

ALLAN PICKERING,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 3 *December,* 1958.

The LEGISLATIVE COUNCIL *has this day agreed to this Bill with Amendments.*

J. R. STEVENSON,
Clerk of the Parliaments.

Legislative Council Chamber,
Sydney, 10 *December,* 1958, *a.m.*

New South Wales

ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. , 1958.

An Act to make provision with respect to the care, treatment and control of persons who are mentally ill and the management of their estates; to repeal the Lunacy Act of 1898 and certain other Acts; and for purposes connected therewith.

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 : —

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Mental Health Act, 1958". Short title and commencement.

NOTE.—The words to be *omitted* are *ruled through;* those to be *inserted* are printed in **black letter.**

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows : —

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–8.

PART III.—ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 9–11.

PART IV.—ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 12–15.

PART V.—DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION—*ss.* 16–20.

PART VI.—VOLUNTARY PATIENTS—*ss.* 21–22.

PART VII.—MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES—*ss.* 23–33.

PART VIII.—WELFARE OFFICERS—*s.* 34.

PART IX.—OFFICIAL VISITORS—*ss.* 35–36.

PART X.—PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES—*ss.* 37–50.

PART XI.—MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS—*ss.* 51–99.

Division 1.—*General Powers and Duties of Master*—*ss.* 51–58.

Division 2.—*Powers and Duties of Master in Respect to Estates of Patients*—*ss.* 59–80.

Division 3.—*Management of Estates of Certain Persons not being Patients*—*ss.* 81–99.

PART XII.—SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES—*ss.* 100–101.

PART

PART XIII.—COURT VISITORS—*s.* 102.

PART XIV.—MISCELLANEOUS PROVISIONS—*ss.* 103–112.

SCHEDULES.

3. (1) The several Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) (a) The persons who immediately before the commencement of this Act held office as the Inspector-General of the Insane, Deputy Inspector-General and Deputy Master in Lunacy shall be deemed as from such commencement to have been appointed by the Governor as the Director, Deputy Director and Deputy Master in the Protective Jurisdiction of the Supreme Court, respectively.

(b) All persons who immediately before the commencement of this Act held office as superintendents, deputy superintendents, medical officers or otherwise under the Acts hereby repealed shall continue to hold office as such as from such commencement.

(c) All persons who immediately before the commencement of this Act held office as official visitors under the Acts hereby repealed shall be deemed to have been appointed as such under this Act:

Provided that any such official visitor who has at such commencement attained the age of seventy years shall upon such commencement be deemed to have vacated his office as such.

(d) All reception-houses appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be admission centres.

(e) All hospitals for the insane or for the criminal insane appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be mental hospitals.

(f)

(f) Any house for the reception of insane patients in respect of which a license granted under the Acts hereby repealed is in force at the commencement of this Act shall be deemed to be licensed as an authorised hospital until such license would have expired but for the provisions of this Act or is sooner revoked in like manner as a license for an authorised hospital may be revoked.

(g) All persons who immediately before the commencement of this Act were incapable persons, insane patients or patients, and insane persons within the meaning of the Acts hereby repealed shall respectively be deemed to be incapable persons, patients and protected persons within the meaning of this Act.

(h) The care, protection, administration and management of the estate of any person which immediately before the commencement of this Act was exercised by a committee of the estate of such person, a person appointed to undertake the care and management of such estate or the Master in Lunacy may continue to be exercised by such committee, person so appointed or the Master under and subject to the provisions of this Act.

(i) All rules of Court, regulations and proclamations made or deemed to have been made under the Acts hereby repealed and in force at the commencement of this Act shall, until varied or rescinded under this Act, continue in force and shall be deemed to have been made under this Act.

(j) All proceedings initiated, pending or part heard under the Acts hereby repealed at the commencement of this Act shall be continued as if such proceedings had been taken or initiated under this Act.

4. In this Act, unless the context or subject matter otherwise indicates or requires: — **Interpretation.**

"Admission centre" means a place appointed to be an admission centre under this Act.

"Authorised

"Authorised hospital" means a hospital in respect of which a license granted to any person under Part III of this Act is for the time being in force.

"Committee" means committee appointed under this Act.

"Continued treatment patient" means a patient in respect of whom an order has been made under section fourteen of this Act that he be reclassified as a continued treatment patient and be detained in an admission centre, mental hospital or authorised hospital.

"Court" means the Supreme Court in its Protective Jurisdiction.

"Director" means Director of State Psychiatric Services appointed under this Act.

"Incapable person" means any person who is proved to the satisfaction of the Court under section thirty-nine of this Act to be through mental infirmity, arising from disease or age, incapable of managing his affairs.

"Judge" means judge of the Court.

"Justice" means justice of the peace.

"Manager" means the person appointed under section thirty-nine of this Act to undertake the care and management of the property of an incapable person.

"Master" means Master in the Protective Jurisdiction of the Supreme Court.

"Mental hospital" means a place appointed to be a mental hospital under this Act.

"Mentally ill person" means a person who owing to mental illness requires care, treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs and "mentally ill' has a corresponding meaning.

"Patient"

"Patient" means any person admitted to and detained in any admission centre, mental hospital, or authorised hospital in accordance with the provisions of this Act and includes any person so admitted and detained while absent from such admission centre, mental hospital or authorised hospital either with or without leave of absence, but does not include a voluntary patient or, in Part V of this Act, except as provided in subsection three of section nineteen of this Act, a person detained in a mental hospital pursuant to Part VII of this Act.

"Prescribed" means prescribed by this Act or the regulations.

"Prison" means prison within the meaning of the Prisons Act, 1952.

"Protected person" means a person in respect of whom a declaration under section thirty-eight of this Act is in force.

"Regulations" means regulations made under this Act.

"Schedule" means Schedule to this Act.

"Stock" means any share or other interest in any company, society or association, and any fund, annuity or security transferable in books kept by any company, society or association, or transferable by deed alone, or by deed accompanied by other formalities, and any money payable for the discharge or redemption thereof, and any share or interest therein.

"Superintendent" means superintendent of any admission centre, mental hospital or authorised hospital.

"Tribunal" means a Mental Health Tribunal constituted under section thirteen of this Act.

"Voluntary patient" means any person who has been admitted to an admission centre, mental hospital or authorised hospital under section twenty-one of this Act.

"Welfare officer" means a person appointed as a welfare officer under section thirty-four of this Act.

5. As from the commencement of this Act, in the construction, and for the purposes, of any Act, by-law, regulation, ordinance or any other instrument of the same or a different kind or nature, any reference to, or to be read, deemed and taken to refer to— References to certain words and expressions —how to be construed.

(a) any word or expression, within the meaning of the Acts hereby repealed, specified in the first column of the Schedule hereunder or to any like word or expression shall be read, deemed and taken to refer to the word or expression appropriate thereto specified in the second column of such Schedule unless the context or subject matter otherwise indicates or requires.

THE SCHEDULE.

First Column.	Second Column.
Insane, lunatic, insane patient, patient, incapable person, insane person, committee of the estate of an insane person, manager of the estate of an incapable person, Master in Lunacy, Lunacy Act of 1898, Inspector-General of the Insane, Deputy Inspector-General, Chief Clerk in Lunacy, Supreme Court in its Lunacy Jurisdiction, hospital for the insane, hospital for the criminal insane, reception house, licensed house.	Mentally ill, mentally ill person, patient, incapable person, protected person, committee of the estate of a protected person, manager of the estate of an incapable person, Master in the Protective Jurisdiction of the Supreme Court, Mental Health Act, 1958, Director, Deputy Director, Chief Clerk in the Protective Jurisdiction of the Supreme Court, Supreme Court in its Protective Jurisdiction, mental hospital, admission centre, authorised hospital.

(b) any of the provisions of the Acts hereby repealed shall be read, deemed and taken to refer to the corresponding provisions (if any) of this Act.

6.

6. There shall be a Protective Jurisdiction of the Supreme Court. Protective Jurisdiction of Supreme Court.

The jurisdiction which immediately before the commencement of this Act was exercisable by the Supreme Court in its Lunacy Jurisdiction shall be exercised by the Supreme Court in its Protective Jurisdiction.

PART II.

ADMINISTRATION.

7. (1) The Governor may appoint a Director of State Psychiatric Services and a Deputy Director of State Psychiatric Services, who shall have and may exercise and perform all the powers, authorities, duties and functions of the Director during his absence for any cause whatsoever. Director of State Psychiatric Services.

(2) The Director shall from time to time visit and inspect every admission centre, mental hospital and authorised hospital with or without previous notice and at any time of the day or night as he thinks fit.

The Director may at any time make such inspections, investigations, and inquiries as he deems necessary, and shall make such inspections, investigations and inquiries as are directed by the Minister, with respect to the care, treatment or control of patients and voluntary patients or with respect to the management of any admission centre, mental hospital or authorised hospital.

(3) (a) The Director visiting any admission centre, mental hospital or authorised hospital may, by notice in writing, require any person to furnish him with such information as he requires concerning any of the matters with respect to which the Director is by this Act authorised to make inspections, investigations or inquiries or to attend and give evidence before him concerning any such matters, and to produce all books, documents or other papers whatever in such person's custody or under his control relating thereto.

(b)

(b) The Director may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he may administer an oath.

(c) Any person who without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Director or to answer truly and fully any questions put to him, or to produce any book, document or papers required of him by the Director, shall be guilty of an offence against this Act.

(4) (a) Any Director or Deputy Director who has any pecuniary interest, directly or indirectly, in any authorised hospital shall be deemed guilty of misconduct within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

(b) A Director or Deputy Director shall not sign any certificate or recommendation for the admission of any patient into or for the further observation and treatment of any patient in any admission centre, mental hospital or authorised hospital.

(5) The Director shall furnish to the Minister an annual report in writing as to the state and condition of the several admission centres, mental hospitals and authorised hospitals and as to the care of the patients and voluntary patients therein, and as to such other particulars as he thinks fit, and a true copy of such report shall forthwith be laid before Parliament if then in session, or if not then in session, within twenty-one sitting days after the commencement of the next session of Parliament.

Medical superintendents.

8. The Governor may appoint a medical superintendent for each admission centre and mental hospital and if he thinks fit a deputy medical superintendent therefor. No person shall be so appointed unless he is a medical practitioner.

A deputy medical superintendent shall have and may exercise and perform all the powers, authorities, duties and functions of the superintendent during his absence for any cause whatsoever.

PART

PART III.

ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Admission centres.

9. The Governor may, by notification in the Gazette, appoint any place to be a place for the admission and temporary treatment of mentally ill persons and every such place shall be an admission centre for mentally ill persons. Any such appointment may be revoked in like manner.

Mental hospitals.

10. The Governor may, by notification in the Gazette, appoint any place to be a mental hospital and in and by such notification may assign a name to such hospital. Any such appointment may be revoked in like manner.

Authorised hospitals.

11. (1) The Minister on the recommendation of the Director may, subject to the provisions hereinafter contained, by writing under his hand in or to the effect of the prescribed form grant to any person or to two or more persons jointly, a license to keep a hospital for the admission and treatment of a number of patients and voluntary patients not exceeding the number specified in such license.

Any such license shall be in force for a period of twelve months but may be renewed from time to time for a further period of twelve months.

(2) Applications for a license under this section shall be made to the Minister, shall be in or to the effect of the prescribed form and shall be accompanied by a plan of the premises in respect of which the license is desired.

(3) The Minister may, for good cause, revoke any such license. One month's notice in writing of the proposed revocation shall be given by the Minister to the holder of such license.

(4) If after the expiration of two months from the termination of a license, whether by effluxion of time or revocation thereof, there is in any authorised hospital in respect of which such license has so terminated any patient or voluntary patient, every person keeping such hospital shall be guilty of an offence against this Act.

(5) No person (unless he is a person who derives no profit therefrom, or a committee, or manager, or otherwise authorised under this Act) shall receive to board or lodge in any house, or take the care or charge of, any patient or voluntary patient.

(6) The holder of a license under this section shall where the authorised hospital in respect of which he holds such license—

(a) has more than one hundred patients and voluntary patients have at all times a medical practitioner resident therein;

(b) has more than fifty but not more than one hundred patients and voluntary patients cause a medical practitioner to attend such authorised hospital daily;

(c) has fifty or less patients and voluntary patients cause a medical practitioner to attend such authorised hospital at least twice a week, or where such number of patients and voluntary patients is less than ten and the Minister authorises the holder of the license to cause a medical practitioner to attend such authorised hospital at specified intervals less frequently than twice a week cause a medical practitioner to attend accordingly.

The medical practitioner resident in an authorised hospital pursuant to paragraph (a) of this subsection shall be the superintendent of such hospital. Where there is no medical practitioner resident in any authorised hospital the holder of the license for such hospital shall be the superintendent of such hospital.

(7) The superintendent of any authorised hospital shall cause to be kept such records and furnish to the Director such particulars as are prescribed in connection with the admission, treatment, discharge, removal, absence with or without leave or death of every patient and voluntary patient admitted to such authorised hospital.

(8)

(8) The holder of a license shall not make or cause to be made any additions or alterations to the authorised hospital for which he holds such license without the approval in writing of the Minister.

PART IV.

ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Procedure for admitting persons to admission centres.

12. (1) A person may be admitted to and detained in an admission centre—

(a) upon the certificate of a medical practitioner who is of the opinion that such person is a mentally ill person;

(b) upon a written request to be so admitted and detained made by him to the superintendent of such admission centre;

(c) upon a written request for him to be so admitted and detained made to the superintendent of such admission centre by a relative or friend of such person;

(d) where he is taken to such admission centre by a member of the police force and a copy of an order, relating to such person, made by a justice under subsection two or three of this section is handed to the superintendent of such admission centre by such member of the police force;

(e) where he is taken to such admission centre by a member of the police force who in writing informs the superintendent of such admission centre that such

such member believes such person to be a mentally ill person and that such member found such person wandering at large or committing some offence against the law or in circumstances which reasonably led him to believe that such person was about to commit some offence against the law:

Provided that a person admitted to or detained in an admission centre pursuant to paragraph (b), (c), (d) or (e) of this subsection shall be examined by the superintendent or a medical officer attached to such admission centre as soon as practicable after his admission thereto and shall not be detained therein after such examination unless such superintendent or medical officer certifies that in his opinion such person is a mentally ill person.

(2) Where a person informs a justice on oath that—

(a) he believes any other person to be a mentally ill person, and

(b) such other person is without sufficient means of support, or is wandering at large, or has been discovered committing some offence against the law or in circumstances which may reasonably lead a person to suspect that such other person was about to commit some offence against the law,

such justice may by order under his hand require a member of the police force to apprehend such other person and to take him to the nearest convenient admission centre.

(3) A member of the police force or welfare officer shall, and any other person may, if he believes that a person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the care and charge of him, so inform a justice on oath. Such justice shall either himself visit and examine the person in respect of whom he has been informed as aforesaid and make inquiry into the case, or by order under his hand direct and authorise some medical practitioner to visit and examine such person and report in writing

writing to such justice his opinion as to the matters of which such justice has been informed as aforesaid. If upon such visit, examination and inquiry by such justice, or upon the report of such medical practitioner it appears to such justice that such person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the control of him, such justice may by order under his hand require any member of the police force to take such person to the nearest convenient admission centre.

(4) The superintendent of an admission centre shall as soon as practicable after the admission of a person to such admission centre cause such person to be examined by two medical practitioners separately and apart from each other.

If either of such two medical practitioners does not recommend that further observation and treatment of such person in a mental hospital is necessary the superintendent shall cause such person to be examined by another medical practitioner.

Where the superintendent is not a person who gave a certificate pursuant to the proviso to subsection one of this section in respect of such person, such superintendent may be one of the medical practitioners aforesaid.

A medical practitioner upon whose certificate or request a person has been admitted to an admission centre shall not make any examination of such person for the purposes of this subsection.

(5) If after examination as aforesaid two medical practitioners recommend that further observation and treatment of such person in a mental hospital or authorised hospital is not necessary, such person shall be discharged from such admission centre.

(6) If after examination as aforesaid two medical practitioners recommend that further observation and treatment in a mental hospital or authorised hospital is necessary, such superintendent shall cause such person to be brought as soon as conveniently may be before a stipendiary magistrate.

Such recommendation shall be in or to the effect of the prescribed form.

(7) Where a medical practitioner making any examination of any person as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon making any recommendation that further observation and treatment of such person is necessary as aforesaid disclose that fact and give particulars thereof in such recommendation.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(8) The superintendent shall give due notice to the nearest known relative or a friend of such person of his intention to have such person brought before a stipendiary magistrate.

(9) The stipendiary magistrate shall upon such person being brought before him hold an inquiry and if he is satisfied after consideration of the recommendations by the medical practitioners as aforesaid and such other evidence as may be placed before him, that such person is a mentally ill person, he shall—

(a) direct that such person be detained in an admission centre, or be admitted to and detained in a mental hospital or authorised hospital, to be specified in such direction for further observation and treatment as a temporary patient for such period not exceeding six months as may be specified therein; or

(b)

(b) order the discharge of such person to the care of any relative or friend who satisfies such stipendiary magistrate that such person will be properly taken care of.

Where pursuant to an inquiry as aforesaid such stipendiary magistrate is not satisfied that such person is a mentally ill person he shall order that such person be discharged from such admission centre.

Such stipendiary magistrate may suspend the execution of any such direction or order for any period not exceeding fourteen days, and may give such directions for the proper care and control of such person in the meantime as such stipendiary magistrate thinks fit.

Where any medical practitioner certifies in writing after examining such person that such person is not fit to be moved from the admission centre in which he is then detained, such person shall not be moved from such admission centre until the same or some other medical practitioner certifies in writing that such person is fit to be moved as aforesaid.

(10) Any certificate given by a medical practitioner for the purposes of paragraph (a) of subsection one of this section shall be in or to the effect of the form set out in Part I of Schedule Two.

Where a medical practitioner giving any certificate as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon giving that certificate disclose that fact and give particulars thereof in such certificate.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(11) Where a medical practitioner is of the opinion that the assistance of a member of the police force is desirable in conveying a person, in respect of whom such medical practitioner has signed any such certificate, to an admission centre he may endorse such certificate in or to the effect of Part II of the form set out in Schedule Two.

Any

Any member of the police force to whose notice any such endorsement is brought shall as soon as practicable convey or assist in conveying such person to an admission centre or cause or make arrangements for some other member of the police force to convey or assist in conveying such person to an admission centre.

(12) Any direction or order given by a stipendiary magistrate, and any order given by a justice, pursuant to any of the provisions of this section, shall be in or to the effect of the appropriate prescribed form and shall have effect according to its tenor.

Mental Health Tribunals.

13. For the purposes of this Part of this Act there shall be such number of Mental Health Tribunals as the Minister may constitute.

A Tribunal shall consist of :—

(a) a psychiatrist;

(b) a medical practitioner; and

(c) a barrister or solicitor.

Temporary patients to be brought before Tribunal.

14. (1) If at the expiration of six months from the date of his admission to an admission centre, mental hospital or authorised hospital a temporary patient is still detained in an admission centre, mental hospital or authorised hospital, the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment;

(b) whether such patient should be detained in an admission centre, mental hospital or authorised hospital for further observation and treatment as a temporary patient for such period not exceeding three months as the Tribunal shall specify in such determination; or

(c) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(2) Where a Tribunal has made a determination under paragraph (b) of subsection one of this section and the patient in respect of whom such determination has been made is at the expiration of the period specified in such determination still detained in an admission centre, mental hospital or authorised hospital the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment; or

(b) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(3) Any determination under this section shall be embodied in an order in the prescribed form and any such order shall have effect according to its tenor.

Medical reviews by superintendents.

15. It shall be the duty of the superintendent to medically examine or cause to be medically examined, at such intervals as may be prescribed, all continued treatment patients with a view to determining whether or not their continued detention in an admission centre, mental hospital or authorised hospital is necessary.

PART

PART V.

DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION.

Discharge of patients by superintendent.

16. The superintendent—

(a) may at any time, if in his opinion further observation and treatment of a patient is not required, discharge such patient;

(b) may discharge a patient pursuant to an application in that regard made by such patient or by any relative or friend of such patient, whether or not, in the case of an application made by a relative or friend of such patient, an undertaking in writing has been given to the superintendent by such relative or friend that such patient will be properly taken care of and will be prevented from injuring himself or other persons; and

(c) shall so discharge a patient where an order for the discharge of such patient has been made under this Act by the Tribunal, the Director, a judge, a stipendiary magistrate, or the official visitors.

Appeal against superintendent's refusal to discharge patient.

17. Where the superintendent has refused an application for the discharge of a patient as aforesaid, such patient, or relative or friend of such patient, making such application may, in the case of a temporary patient, if a period of three months has elapsed since the date of admission of such patient to an admission centre, mental hospital or authorised hospital, and in the case of a continued treatment patient, at any time, appeal against such refusal to the Director or any two or more official visitors.

The Director or official visitors to whom such appeal is made shall consider the circumstances of the case and the report on the case obtained from the superintendent (which report the superintendent shall give when required by the Director or any such official visitors) in which his reasons for refusing the application are stated, and may, if he or they think

think fit, order the discharge of such patient from the admission centre, mental hospital or authorised hospital, in which he is detained.

Judge may order discharge of patient.

18. Where a judge receives information upon oath, or has reason or cause to suspect that any person who is not a mentally ill person is detained in any admission centre, mental hospital or authorised hospital such judge may order the superintendent of such admission centre, mental hospital or authorised hospital to bring such person before him for examination at a time to be specified in such order, and if upon the examination of such person, and of such superintendent, and of any medical or other witnesses, it appears to such judge that such person is not a mentally ill person, such judge may order that such person be immediately discharged from such admission centre, mental hospital or authorised hospital.

Patient may be permitted to be absent in certain circumstances.

19. (1) The superintendent may allow a patient to be absent from an admission centre, mental hospital or authorised hospital for such period as the superintendent may think fit, or for such period and at such place and on such conditions as the superintendent may think fit for the benefit of the patient's health.

(2) Where any patient is so allowed to be absent and does not—

(a) at the expiration of such period return to the admission centre, mental hospital or authorised hospital from which he has been so allowed to be absent and a certificate of a medical practitioner certifying that the detention of such patient as a patient is no longer necessary is not received by the superintendent before the expiration of such period, or

(b) comply with any condition upon which he is so allowed to be absent,

such patient may at any time after the expiration of such period or non-compliance with any such condition, as the case may be, be apprehended by a member of the police force and returned to such admission centre, mental hospital or authorised hospital.

(3) In this section "patient" includes a person detained in a mental hospital pursuant to section thirty-two of this Act.

Transfer of patients.

20. The Director may by order in writing direct the transfer of a patient from the admission centre, mental hospital or authorised hospital in which he is detained to an admission centre, mental hospital or authorised hospital. Any such order for transfer shall be a sufficient authority for the transfer of such patient and for his being received into and detained in the admission centre, mental hospital or authorised hospital to which he is ordered to be transferred.

PART VI.

VOLUNTARY PATIENTS.

Voluntary patients.

21. (1) A person may be admitted to and detained in an admission centre, mental hospital or authorised hospital as a voluntary patient—

(a) where such person is of or above the age of twenty-one years, upon an application in that behalf made by him;

(b) where such person is under the age of twenty-one years, upon an application in that behalf made by the person in whose care and custody he may be.

Such application shall be in writing and be made to the superintendent of such admission centre, mental hospital or authorised hospital.

(2) A superintendent shall, subject to the provisions of this section, discharge a voluntary patient within seven days after an application in writing for his discharge has been made to such superintendent—

(a) where such voluntary patient is of or above the age of twenty-one years, by such voluntary patient or some person on his behalf;

(b)

(b) where such voluntary patient is under the age of twenty-one years, by the person upon whose application he was admitted to and detained in an admission centre, mental hospital or authorised hospital pursuant to subsection one of this section.

(3) No person shall be admitted to an admission centre, mental hospital or authorised hospital under this section unless the superintendent is satisfied that such person is likely to be benefited by his being so admitted for care and treatment as a voluntary patient.

(4) A superintendent may—

(a) grant leave of absence to any voluntary patient;

(b) discharge any voluntary patient;

(c) if the condition of the voluntary patient so requires cause such action to be taken as may be necessary to have such voluntary patient admitted to and detained in an admission centre as a temporary patient.

Master may take charge of estates of voluntary patients in certain circumstances.

22. (1) The Master may take charge of the estate of a voluntary patient—

(a) who is of or above the age of twenty-one years, if he is requested so to do by such voluntary patient;

(b) who is under the age of twenty-one years, if he is requested so to do by the person on whose application such voluntary patient was, pursuant to subsection one of section twenty-one of this Act, admitted to and detained in an admission centre, mental hospital or authorised hospital.

(2) Where, pursuant to this section, the Master takes charge of the estate of a voluntary patient, he shall have in respect thereof all the powers, authorities, duties and functions which he has under Part XI of this Act in respect of the estate of a patient.

PART

PART VII.

MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES.

Procedure where persons charged with offences are found to be mentally ill by a jury or acquitted on the ground of being mentally ill. cf. Act No. 45, 1898, s. 65.

23. (1) If any person indicted for any offence is mentally ill and, upon arraignment, is found to be so by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person is found by the jury, before whom he is tried, to be mentally ill, the judge before whom any such person is brought to be arraigned or tried as aforesaid may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody in such place and in such manner as to such judge may seem fit until he is dealt with as provided by section twenty-four of this Act.

(2) In all cases where it is given in evidence upon the trial of any person charged with any treason, felony or misdemeanour that such person was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill, and such person is acquitted, the jury shall be required to find specially whether such person was at such time mentally ill and to declare whether such person was acquitted by them on the ground that he was at such time mentally ill.

In this subsection "mentally ill" means, in relation to any person charged as aforesaid, so insane as not to be responsible, according to law, for the act or omission the subject of the charge.

(3) If the jury find that such person was at the time the act or omission the subject of the charge was done or omitted to be done mentally ill as aforesaid, the judge before whom such trial is had shall order such person to be kept in strict custody, in such place and in such manner as to such judge seems fit until the Governor's pleasure is known, and thereupon the Governor may give such order for the safe custody of such person during the Governor's pleasure in a prison as the Governor deems fit.

(4)

(4) Upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, the Governor, by warrant under his hand, may direct that such person be conveyed to and detained in a mental hospital during the Governor's pleasure.

Persons found to be mentally ill before trial to be sent to mental hospital.

cf. Act No. 45, 1898, s. 66.

24. (1) When any person committed to take his trial for any offence is certified by two medical practitioners to be mentally ill, such certificates to be in or to the effect of the form of Schedule Three, or is upon arraignment found by verdict to be mentally ill, the Minister may direct, by order under his hand in or to the effect of the form of Schedule Four, that such person be removed to, and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall order his removal to a prison in order to be tried for such offence or if he is not to be so tried order that he be discharged.

(2) Such detention for any period shall not operate as a bar to his subsequent indictment and trial for such offence.

Procedure in reference to certain persons under detention appearing to be mentally ill.

cf. *Ibid.* s. 67.

25. If any person while detained in any prison for debt, or in any prison, or other place of confinement, in consequence of any summary conviction or order by any justice or in default of bail, appears to be mentally ill, the Minister may, upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct, by order under his hand, that such person be removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall, if such person remains subject to be continued in custody, order his removal to the prison or other place from where he was taken, or to some other prison or place of confinement, or if such person does not remain subject to be continued in custody order that he be discharged.

26. (1) In any case in which a person charged with an offence for which he has not been tried (in this section referred to as "the person charged") is detained in a mental hospital the Attorney-General, if he is of opinion that the question whether the person charged is fit to plead if put upon his trial should be determined by a jury, may by order under his hand direct that the person charged be removed from such mental hospital to some prison appointed by the Attorney-General and specified in the order. Order by Attorney-General for trial of issue whether patient fit to plead if placed upon trial. cf. Act No. 45, 1898, s. 67A.

(2) Such order shall be a sufficient warrant for the removal of the person charged from the hospital in which he is detained and for his detention in the prison appointed by the Attorney-General and specified in the order.

(3) The Attorney-General may further order that a jury of twelve persons be empanelled for trial of an issue whether the person charged is fit to plead if placed upon his trial.

(4) The said issue shall be tried at a time and place appointed by the Attorney-General before a judge of the Supreme Court or a chairman of Quarter Sessions.

(5) The governor of the prison in which the person charged is detained shall procure the attendance of the person charged at the time and place appointed for the trial of the said issue.

(6) At the request of the Clerk of the Peace the Sheriff shall summon thirty-six persons, chosen by him from the list of jurors in the jurors' list for the jurors' district within which the place appointed for the trial of the said issue is situated, to attend at the time and place appointed for the trial of the said issue.

(7) A jury of twelve persons shall be empanelled from the jurors in attendance at the court and the said issue shall be tried in accordance with the procedure adopted at a criminal trial where upon the trial of an indictment a question is raised whether the accused is fit to plead. The judge presiding at the trial shall have power to make any order including a power of postponement and give any directions which

which in his opinion are necessary for the trial of the issue. The jurors empanelled to try the issue shall be sworn in such manner as the court shall direct.

(8) If the jury find that the person charged is not fit to plead he shall be returned to the hospital from which he was removed.

(9) If the jury find that the person charged is fit to plead he shall be returned to prison.

(10) If a bill is found against him he shall be placed upon his trial.

(11) If a bill is not found against him a certificate shall be issued by the Attorney-General to the judges of the Supreme Court in accordance with the provisions of section three hundred and fifty-eight of the Crimes Act, 1900, as amended by subsequent Acts, and any of the said judges may thereupon direct the gaoler in whose custody the person charged may be to discharge him from custody.

(12) At the trial of the said issue the person charged shall be entitled to give evidence on oath or to make an unsworn statement.

(13) If the jury find that the person charged is fit to plead and he is placed upon his trial he shall be entitled to set up the defence that he was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill.

In this subsection "mentally ill" has the meaning ascribed thereto in subsection two of section twenty-three of this Act.

Procedure on certain prisoners appearing to be mentally ill.

cf. Act No. 45, 1898, s. 68.

27. If any person while imprisoned in any prison, under any sentence of hard labour or imprisonment imposed otherwise than on the conviction or order of justices appears to be mentally ill the Minister may upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct by order under his hand in or to the effect of the form of Schedule Four, that such person be removed

removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall if such person remains subject to be continued in custody, order his removal to the prison from where he was taken, or to some other prison, or if such person does not remain subject to be continued in custody order that he be discharged.

Procedure on prisoners under sentence of death appearing to be mentally ill.

cf. Act No. 45, 1898, s. 69.

28. If it is made to appear to the Minister by any means whatsoever that there is good reason to believe that any prisoner in confinement under sentence of death is then mentally ill, the Minister may appoint two or more medical practitioners to inquire into the mental health of such prisoner, and if on such inquiry such prisoner is found to be then mentally ill, the fact shall be certified in writing by such practitioners to the Minister, and on receipt of such certificate the Minister may, by order under his hand, direct that such prisoner be removed to and detained in a mental hospital until such prisoner is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall order that such person be removed to any prison or other place of confinement to undergo his sentence of death or to be dealt with according to law, as if no such order for his removal to and detention in a mental hospital had been made.

Governor may liberate on conditions.

cf. *Ibid.* s. 72.

29. When any person is ordered to be kept in custody during the Governor's pleasure, any order made by the Governor in relation to the custody of such person may be renewed and varied from time to time or revoked; and the Governor may permit any such person or any person conveyed to and detained in a mental hospital pursuant to a direction by the Governor, not being a person under conviction and sentence, to be liberated from custody or such mental hospital, upon such terms and conditions as the Governor may think fit; and if any such term or condition is broken, such person may be retaken and dealt with as provided in section thirty of this Act.

Escaped mentally ill persons detained under this Part may be recaptured.

30. In case of the escape of any person detained in a mental hospital pursuant to the provisions of this Part of this Act he may be retaken at any time by the superintendent, or any officer, servant or other person employed therein, or any member of the police force, or any other person authorised by the Minister or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised and shall be conveyed and admitted to and detained in such hospital.

cf. Act No. 45, 1898, s. 73.

Penalties for assisting or permitting escape.

31. Any person who rescues any person being conveyed to or detained in any mental hospital pursuant to the provisions of this Part of this Act, and the superintendent or any officer, servant, or other person employed in any such hospital who, through wilful neglect or connivance, permits any person so detained therein pursuant to the provisions of this Part of this Act to escape therefrom, or conceals or abets or connives at any such escape, shall be guilty of an offence against this Act and shall be liable **upon conviction on indictment** to imprisonment for a period not exceeding three years or **upon summary conviction to imprisonment for a period not exceeding one year or to** a penalty not exceeding five hundred pounds or both such imprisonment and penalty.

cf. *Ibid.* s. 74.

Persons attempting to commit suicide and mentally ill not triable for the offence.

32. Any person committed to take his trial for having attempted to commit suicide who is certified by two medical practitioners in or to the effect of the form of Schedule Three to be mentally ill shall forthwith be sent to and detained in a mental hospital and such person, when certified by the superintendent and Director, or by the superintendent and an official visitor, to be not mentally ill, shall be discharged from such hospital, and shall not be put upon his trial or be liable to any charge or indictment for having attempted such act of suicide.

cf. *Ibid.* s. 75.

Security conditions for persons detained in mental hospitals under this Part.

33. (1) Any person detained in a mental hospital pursuant to the provisions of this Part of this Act shall be subject to such security conditions as the Director may deem necessary.

(2)

(2) The Director may by order in writing direct the transfer of a person detained in a mental hospital pursuant to this Part of this Act to any other mental hospital. Any such order for transfer shall be a sufficient authority for the transfer of such person and for his being admitted to and detained in the mental hospital to which he is ordered to be transferred.

PART VIII.

Welfare Officers.

Appointment and duties of welfare officers.

34. (1) For the purposes of this Act the Governor may appoint such welfare officers as he deems necessary.

(2) The powers, authorities, duties and functions of a welfare officer shall be:—

(a) on the direction of a superintendent to escort and convey or assist in escorting and conveying a patient to a mental hospital, where such patient has been granted leave of absence from such mental hospital and such patient's return is desirable on account of a breakdown in his mental health;

(b) to escort and convey or assist in escorting and conveying patients from a mental hospital to another mental hospital or to a public hospital;

(c) to visit patients, who are on leave of absence from mental hospitals, or their relatives or friends for the purpose of advising them on matters pertaining to the welfare of such patients;

(d) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon him by or under this Act or as may be assigned to him by the Director.

PART IX.

OFFICIAL VISITORS.

Appointment of official visitors.

35. (1) The Governor may appoint for every admission centre, mental hospital or authorised hospital, two or more official visitors, one of whom shall be a medical practitioner and one a stipendiary magistrate, barrister-at-law, or solicitor.

(2) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of an official visitor and such official visitor shall not in his capacity as such be subject to the provisions of any such Act.

(3) No person of or above the age of seventy years shall be appointed as an official visitor. An official visitor shall cease to hold office as such on the day upon which he attains the age of seventy years.

(4) Any two or more official visitors, one being a medical practitioner, shall visit the place for which they are appointed official visitors once at least every month with or without any previous notice, and at such hours of the day or night, and for such length of time as they think fit, and also at such other times as the Minister may direct.

(5) Any person who has any pecuniary interest, directly or indirectly, in an authorised hospital shall not be or act as an official visitor for any authorised hospital and no official visitor shall sign any certificate or request for the admission of any person to, or attend professionally upon, any patient in any admission centre, mental hospital or authorised hospital.

(6) Such official visitors, when visiting such admission centre, mental hospital or authorised hospital, shall, so far as practicable, inspect every part of the same and make such inquiries as they may deem necessary as to the care, treatment and control of the persons detained therein.

Duties of superintendents on visits by official visitors.

36. (1) The superintendent shall allow the official visitors visiting an admission centre, mental hospital or authorised hospital to have access to and inspect every part thereof and shall permit them to see and interview every person detained therein

therein, and shall give full and true answers to the best of his knowledge to all questions which the official visitors may ask in reference to the said admission centre, mental hospital or authorised hospital, and the persons detained therein, and shall produce to the official visitors such registers, books, records, orders, certificates, papers and other documents relating to the admission and discharge, care, treatment and control of persons detained therein, and furnish all such returns relating to any of the matters aforesaid, as may be required by such official visitors.

(2) The official visitors shall—

(a) examine and sign all registers, books and records produced to them in accordance with the foregoing provisions;

(b) on every visit to an admission centre, mental hospital or authorised hospital enter in the official visitors' book the fact of their visit with such observations as they think fit; and

(c) transmit to the Minister as soon as practicable after each such visit a report upon their visit containing such information as they deem necessary.

PART X.

PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES.

Constitution of Court.
Act No. 45, 1898, s. 101.

37. The Court shall, except on appeal as hereinafter provided, be holden by the Chief Judge or a judge in Equity, or by any other judge sitting for the Chief Judge in Equity during his absence from Sydney or illness or at his request:

Provided that any such judge may sit in chambers to determine all such matters as in his opinion may advantageously and with propriety be heard in chambers; and such judge when so sitting shall have the same powers and jurisdiction as in open court.

Declarations of Court as to persons being mentally ill.
cf. Act No. 45, 1898, s. 102.

38. Where it is proved to the satisfaction of the Court that a person is mentally ill and incapable of managing his affairs, the Court may make a declaration to that effect, and may direct a reference to the Master to make inquiries concerning the property of such person, and may make all proper orders for rendering the property of such person, or the income thereof available for the payment of his debts and for the maintenance or benefit of himself and his family, and for carrying on his trade or business (if any), and may, if necessary, appoint, either with or without security, a committee of his estate, and also when desirable appoint a committee of his person.

Persons incapable of managing their affairs.
cf. *Ibid.* s. 103.

39. (1) Where it is proved to the satisfaction of the Court that any person is, through mental infirmity, arising from disease or age, incapable of managing his affairs, the Court may make all proper orders for rendering the property and income of the said person available for the payment of his debts and for the maintenance and benefit of himself and his family; and may make orders for the care and management of his property in all respects as if he were a protected person; and may, if necessary, appoint a manager, either with or without security, to undertake the care and management of his property under the order and direction of the Court.

(2) The manager shall, subject to the said orders and directions and to the rules of Court, have the same powers and be subject to the same obligations and control as a committee, appointed under section thirty-eight of this Act, of the estate of a protected person, and the powers and provisions contained in this Act relating to the management and administration of the estates of protected persons shall apply to the estates of incapable persons.

Superseding orders, etc. when person has recovered.
cf. *Ibid.* s. 104.

40. Where it is proved to the satisfaction of the Court that any protected person or incapable person has recovered his mental health and is capable of managing his affairs, the Court may make a declaration to that effect, and may make all proper orders to give effect to such declaration, and to release the property of such person from the control of the Court

Court or the manager, as the case may be, and to discharge the committee of his estate and the committee (if any) of his person or the manager, as the case may be.

Mode of application. cf. Act No. 45, 1898, s. 105.

41. Applications under sections thirty-eight, thirty-nine and forty of this Act shall be made, and evidence by affidavit given in support thereof, in such manner as is prescribed by rules of Court:

Provided that every deponent may be cross-examined upon his affidavit either at the hearing or at such time and place as the Court may direct, and at such hearing the Court may receive or require the oral evidence of witnesses and such other proofs as may be deemed necessary.

Service of process. cf. *Ibid.* s. 106.

42. Notice of any applications under sections thirty-eight, thirty-nine and forty of this Act and of the evidence by affidavit to be given in support thereof shall be given to such persons, in such manner and within such time as may be prescribed by rules of Court.

Court may order inquiry before a jury. cf. *Ibid.* s. 107.

43. The Court in any case, instead of determining whether or not the person whose mental health is the subject of inquiry is mentally ill and incapable of managing his affairs, or is through mental infirmity, arising from disease or age, incapable of managing his affairs, may order that question to be determined by a jury; and thereupon the like proceedings for procuring the return of such jury shall be had and taken as provided by any law for the time being in force for the return of juries in the Supreme Court, and in every proceeding before a jury pursuant to this section the number of the jury shall be four, unless the Court order a jury of twelve.

Inquiries before jury. cf. *Ibid.* s. 108.

44. Where any such inquiry before a jury is ordered, the Court shall direct the question to be tried before a judge or the Master, or a commissioner specially appointed, who shall while so acting have for the purpose of the inquiry all the powers of the Supreme Court; and the trial of every such question and the verdict thereon shall be had and dealt with in all respects in accordance with any law for the time being in force relating to the trial of issues out of the Supreme Court.

45. When the verdict of the jury has been returned, unless a new trial is granted, the Court may make such declaration and orders as mentioned in sections thirty-eight and thirty-nine of this Act, as the case may require.

After verdict Court may make declarations and orders.

cf. Act No. 45. 1898, s. 109.

46. On the hearing of any application under section thirty-eight or thirty-nine of this Act the person whose mental health is in question shall be examined by the Court; and on the trial of any such question as abovementioned there shall be a like examination by the jury before they consult as to their verdict, and every such examination shall take place in open court or in private, as may be deemed expedient:

Provided that, if it appears to the Court to be unnecessary or inexpedient that such person should be examined by the Court, or the jury, the Court may, in lieu of the examination aforesaid, direct the Master to personally examine the said person and report on such examination, or may dispense with any examination whatever.

Examination of person whose mental health is in question.

cf. *Ibid.* s. 110.

47. Where in any Act or rule of Court or instrument, reference is made to a commission of Lunacy, or a writ in the nature of a writ de lunatico inquirendo, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission, the application and declaration or orders thereon in sections thirty-eight and forty of this Act mentioned, as the case may require, shall be taken to be intended by or comprehended in such reference.

Construction of references to commission of Lunacy and certain like expressions

cf. *Ibid.* s. 111.

48. When the Court is satisfied that any person has been found mentally ill and incapable of managing either himself or his affairs or both by any commission de lunatico inquirendo, or other legal inquiry in any part of the British Commonwealth of Nations outside New South Wales or in any other country to which the Governor by proclamation published in the Gazette extends the provisions of this section, the Court may direct a copy of the inquisition or finding on such commission or inquiry, duly certified by the proper officer of the Court or other authority into which such inquisition or finding has been returned

Persons found mentally ill in places outside N.S.W.

cf. *Ibid.* s. 112.

returned, to be filed of record in the Court; and may thereupon appoint a committee of such person's estate or person, or both, and may give such other orders in respect of the management of his estate or person as it deems fit; and such committee shall have the same duties, powers, and liabilities as if he were the committee of the estate or person of a protected person.

49. The Court may make such order as to the costs, charges, and expenses of and incidental to any proceeding authorised by this Act as the Court thinks proper, and every such order shall have the same effect as orders for the payment of money made by the Supreme Court in its equitable jurisdiction. Court may order costs. cf. Act No. 45, 1898, s. 113.

50. ~~(1)~~ There shall be an appeal to the Full Court of the Supreme Court from every order or decision made under this Act before or by a single judge in such manner as may be prescribed by rules of Court. Appeal. cf. *Ibid.* s 114.

~~(2) Every person so appealing shall within fourteen days from the time of filing such appeal, either—~~

~~(a) deposit with the Master such sum, not exceeding one hundred pounds, as the Master directs; or~~

~~(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.~~

~~(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.~~

~~(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.~~

PART

PART XI.

MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS.

Division 1.—*General Powers and Duties of Master.*

Master in Protective Jurisdiction of Supreme Court.

51. There shall be a Master in the Protective Jurisdiction of the Supreme Court, who shall be the person for the time being holding the office of Master in Equity.

cf. Act No. 45, 1898, s. 115.

The Governor may appoint a Deputy Master. The Deputy Master may exercise all the powers conferred and shall perform all the duties imposed upon the Master by any Act or by any rule or order of the Court. During the illness or absence of the Deputy Master, the Court or the Chief Judge or a judge in Equity may authorise the Chief Clerk in the Protective Jurisdiction of the Supreme Court to exercise all the powers conferred and perform all the duties imposed upon the Master.

Administration of estates of certain persons.

cf. *Ibid.* s. 116.

52. (1) Subject to rules of Court, the jurisdiction and powers of the Court in respect of the administration and management of the estates of all protected persons and incapable persons may be exercised by the Master; and every order made by the Master under the authority hereby conferred on him shall take effect, unless rescinded or varied by the Court; and the Master shall have and execute all the powers and duties hereby or under the authority hereof vested in and imposed upon him; and subject to and in accordance with the regulations and the rules of Court and to any special order of the Court, the Master shall undertake the general care, protection, and management, or supervision of the management, of the estates of all patients, protected persons and incapable persons; and he shall supervise and enforce the performance of the obligations and duties of all committees under this Act, and shall take care of, collect and administer, under the provisions of this Act, the property and estates of all patients.

(2)

(2) The Master may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stockbroker or any other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate of any patient, protected person or incapable person.

(3) The Master shall not be responsible for the default of any such agent if employed in good faith.

Expenses incurred to be paid out of estate.

cf. Act No. 45, 1898, ss. 117, 118.

53. All expenses incurred by or on behalf of the Crown, in the care, protection, and management, or in the supervision of the management, under this Act, of the estate of any patient, protected person or incapable person, may be charged by the Master against and shall be paid out of and recoverable from such estate or may be paid by the Master out of any money of such patient, protected person or incapable person that comes to his hands, or may be recovered by him on summary application to the Court, whether or not such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Percentages.

cf. *Ibid.* s. 119.

54. There shall be paid to the Master a percentage at such rate not exceeding five pounds per centum per annum as may be fixed by rule of Court on the clear annual income of every patient, protected person and incapable person; and the said percentage shall be charged upon and payable out of the estate of such patient, protected person or incapable person whether or not, before payment, such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Master to have all necessary powers of inquiry, taking evidence, etc.

cf. *Ibid.* s. 120.

55. (1) The Master may in the execution or performance of his powers, authorities, duties and functions, and also in the prosecution of all inquiries and matters which may be referred to him under this Act, summon persons before him and administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit, and take recognizances and require the production of books, papers, accounts,

accounts, and documents; and every person so summoned shall be bound to attend as required by the summons and give evidence before the Master in like manner as persons summoned before him in his equity jurisdiction are bound to attend and to give evidence; and the Court may by any order (general or particular) refer to the Master any inquiries under the provisions of this Act relating to the person and estate of any person.

(2) Every person who does not appear pursuant to such summons (having had his reasonable expenses paid or tendered to him at the time of service of such summons), or does not assign some reasonable excuse for not so appearing, or appears and refuses to be sworn or examined shall, for every such neglect or refusal, be liable to a penalty not exceeding ten pounds.

Witnesses may be cross-examined orally. cf. Act No. 45, 1898, s. 121.

56. Every person giving evidence by affidavit shall be liable to oral cross-examination by or before the Master upon his affidavit, and after cross-examination may be re-examined orally by or on behalf of the person filing the affidavit; and every person giving evidence by affidavit shall be bound to attend before the Master to be so cross-examined and re-examined upon receiving due and proper notice and payment or tender of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena ad testificandum before the Master; and the expenses attending on such cross-examination and re-examination shall be paid in such manner and by such person as the Master directs.

Master may issue advertisements. cf. *Ibid.* s. 122.

57. The Master may cause to be issued such advertisements as may to him seem expedient with reference to the subject matter of a proposed inquiry or with a view to the efficient discharge of his duties as Master under this Act with regard to the estate and property of any person.

Master to approve of and to enforce security to be given by committee of estate. cf. *Ibid.* s. 123.

58. The Master shall approve on behalf of Her Majesty of the security to be given by the committee of the estate of any person under order of the Court pursuant to this Act, and it shall be the duty of the Master to see that the conditions of all bonds and recognizances heretofore or hereafter to be given or entered into by the committee of the estate

estate or other persons in the matter of the estate shall be faithfully and regularly observed and performed, and immediately to report to a judge any breach or non-performance of any of such conditions; and thereupon such judge may cause such bond or recognizance to be forfeited or estreated, and such forfeiture or estreat shall be enforced and effected in the manner provided by any law now or hereafter to be in force relating to the estreat of recognizances entered into to Her Majesty.

Division 2.—Powers and Duties of Master in Respect to Estates of Patients.

Powers of Master in respect of estates of patients.

cf. Act No. 45, 1898, s. 124.

59. The Master shall have in respect of the property and estate of any patient, in addition to the general powers conferred upon him in Division 1 of this Part of this Act, all the like powers and authorities, subject to the like limitations, as are hereinafter, in Division 3 of this Part of this Act, given to the committee of the estate of a person, and also the powers hereinafter mentioned.

Power to apply property of certain acquitted persons for their benefit.

cf. *Ibid.* s. 125.

60. Where any person has on the trial of any information been acquitted as referred to in subsection two of section twenty-three of this Act or has upon arraignment upon a criminal charge been found to be mentally ill, the Sheriff shall report the fact to the Master, who shall thereupon make inquiry respecting the property of such person, and the Court may, on being satisfied that such person is still a mentally ill person and is still in confinement, make any orders with respect to the property of such person 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.

Master's powers as to property of patients.

cf. *Ibid.* s. 126.

61. The Master shall have the management and care of the property of every patient, and in addition to other powers and duties necessary and incident to such management and care,

care, may exercise the following powers and perform the following duties with respect to the estate of every patient, that is to say, he may : —

(a) receive moneys, rents, incomes, and profits of real and personal property;

(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 one thousand 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, suits, and other proceedings on behalf of the patient;

(j) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

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

cf. Act No. 45, 1898, s. 127.

62. (1) The Master may apply to the Court in such manner as may be prescribed by rules of Court, for directions with respect to the exercise of any of the powers over the estate of a patient which the Court may exercise, or order a committee to exercise, over the estate of any person, under Division 3 of this Part of this Act.

(2) The Court 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.

Master may execute instruments on behalf of patient.

cf. *Ibid.* s. 128.

63. (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 not mentally ill, and may, in the name and on behalf of the patient, execute and sign deeds, instruments, transfers of shares, receipts, releases, and other documents, which shall be as effectual as if executed and signed by the patient himself while not mentally ill, 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 is a patient or not.

(2) 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 is 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.

Summary proceedings for protection of property of patients.

cf. *Ibid.* s. 129.

64. (1) If any real or personal property of a patient is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient by any person, the Master may as such Master claim and recover possession of such property or damages for the conversion or injury thereof,

thereof, or payment of the said sum by summary proceeding on complaint before a judge who is hereby authorised and required on proof to his satisfaction of the said cause of complaint to make an order requiring the defendant to give up possession of such property, or to pay reasonable damages to be fixed by the said order for the conversion or injury thereof, or to pay the sum so due as aforesaid, and in default of compliance by the defendant with the said order, to order in and by the same or any subsequent order that the defendant be committed to prison for any period not exceeding six months.

(2) Such judge may in any complaint under this section make such order as to costs as he thinks fit, and every order under this section shall have the same effect, and may be enforced in like manner as any judgment, decree, or order of the Supreme Court in its jurisdiction at law or in equity.

Payments to consolidated revenue.

cf. Act No. 45, 1898, s. 130.

65. (1) 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 may from time to time appoint, all money paid to him for the maintenance of any patient, and all percentages.

(2) 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.

(3) A separate current 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.

cf. *Ibid.* s. 131.

66. The Master may apply moneys standing to the credit of the current account of a patient in 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)

(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 not a mentally ill person;

(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 taking up of the rights to issues of new shares to which a patient becomes entitled by virtue of his existing shareholdings;

(g) the investment, in manner hereinafter provided, of money not presently required for the above purposes;

(h) the payment to a patient or any person in accordance with the provisions of section seventy-one or seventy-three of this Act:

Provided that the Master may report to and apply for the advice and directions of the Court upon any of the matters aforesaid; and the Court 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 to be made, and notices given as may be deemed advisable, and may make such orders in the premises as may be thought proper.

Investment on purchase of land. cf. Act No. 45, 1898, s. 133.

67. The Master may, with the leave of the Court, to be obtained in such manner as is or may from time to time be prescribed by rules of Court, invest any money unapplied as aforesaid in the purchase of land, if such purchase appear to the Court to be desirable for the purpose of protecting the estate of the patient from injury or deterioration in value, of increasing the value or facilitating the sale of other lands of the estate, or of providing a home for the patient or his dependants; and the Court may, on the hearing of the application, deal with the same ex parte, or require notice to be served on any person.

68.

Common fund.

cf. Act No. 19, 1913, s. 36A.

68. (1) Subject to this Act balances to the credit of all current accounts in the trust fund at the commencement of this Act and at any time thereafter shall be one common fund and shall be available for investment as provided in this Act.

(2) Interest received from investments from the common fund shall be credited to an account styled "Interest Account" and shall be allocated therefrom as provided in this section.

The costs and expenses of such allocation shall be a charge on the common fund.

(3) Interest shall be allowed on all balances forming part of the common fund, and shall be credited at such rate or rates and at such time or times as the Master may determine.

Investment of common fund and moneys unapplied under s. 66.

cf. *Ibid.* s. 36D.

69. Moneys unapplied as aforesaid and moneys in the common fund may be invested—

(a) in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts; or

(b) on deposit with the Colonial Treasurer for a period or periods not exceeding twelve months in any one case, which deposit shall bear interest at the prescribed rate and any such deposit may be renewed from time to time for a like period and subject to the like conditions.

Withdrawal from the common fund.

cf. *Ibid.* s. 36E.

70. (1) The Master may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund and standing to the credit of the current account of any patient for any purpose of or relating to the exercise and discharge by the Master of his powers, authorities, duties and functions in the care, protection and management of the estate of such patient.

(2) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund.

71.

Payment over of estate before discharge in certain cases. cf. Act No. 45, 1898, s. 134.

71. (1) If any patient is permitted to be absent from an admission centre, mental hospital or authorised hospital under the provisions of this Act, the Master may, in his discretion, pay over to the patient, or to any person on his behalf who gives 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 his current account 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.

(2) 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.

Sale, etc. by patient before his discharge may be set aside. cf. *Ibid.* s. 135.

72. 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 may, on application being made by the Master in such manner as is or may from time to time be prescribed by rules of Court, and on notice being given to such persons as the Court 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 a mentally ill person at the time when he made or executed the transfer, sale, alienation, charge, or lease.

Payments to discharged patients and to personal representatives of deceased patients. cf. *Ibid.* s. 136.

73. (1) 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 his current account 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, documents and chattels forming part of his estate.

(2) 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.

(3)

(3) The Master, in his discretion, may continue to have the care, protection and management of the estate of a discharged patient until the discharged patient obtains an order of the Court or the Master is satisfied that the discharged patient is capable of managing his own affairs.

(4) The Master, in his discretion, may after the death of a 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, documents 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 that probate of the will or letters of administration have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Unclaimed personal effects and moneys of patient.

cf. Act No. 45, 1898, s. 137.

74. (1) All personal effects in the hands of the Master belonging to a patient, and not claimed within two years from the date of the death or 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.

(2) All moneys standing to the credit of a patient in his current account in the trust fund at the end of six years from the date of the death or discharge of that patient shall be carried to and form part of the consolidated revenue.

(3) Nothing herein contained shall affect the right of a person under disability by reason of his being an infant, a mentally ill person or absent 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.

cf. *Ibid.* s. 138.

75. (1) 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.

(2)

(2) On the discharge or death of a patient, he or his legal personal representative (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 not a mentally ill person.

Relatives, etc., may agree for maintenance of patient. cf. Act No. 45, 1898, s. 139.

76. The Master may agree with any relative, guardian, or friend of any patient detained in an admission centre, mental hospital or authorised hospital for his maintenance while detained therein, and such relative, guardian, or friend shall be entitled to be reimbursed all necessary sums expended in such maintenance and interest thereon out of any real or personal property of such patient.

Owner, etc., of ship or aircraft liable for maintenance of certain mentally ill persons. cf. *Ibid.* s. 140.

77. (1) If within sixty days after the arrival of any ship or aircraft in New South Wales the Master has reasonable cause to believe that a passenger or member of the crew arriving by that ship or aircraft is a mentally ill person and has become, or is likely to become, a charge upon the public as a patient in an admission centre or mental hospital, it shall be lawful for the Master thereupon to require the owner, charterer, agent, or master of that ship or aircraft to execute, with two sufficient sureties, jointly and severally, a bond to Her Majesty in such sum as the Master may determine, not exceeding three thousand pounds, conditioned to pay to the Master the maintenance of that passenger or member of the crew in such admission centre or mental 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 of the ship or aircraft, subject to the approval of the Master, to return such passenger or member of the crew to the place whence he was transported.

(2) 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.

(3)

(3) No bond shall be required when the passenger or member of the crew is, at the date of the arrival of the ship or aircraft, domiciled in New South Wales; but the onus of proving such domicile as aforesaid shall be upon the said owner, charterer, agent, or master of the ship or aircraft.

Neglect or refusal to execute bond.

78. If the said owner, charterer, agent, or master of the ship or aircraft 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 three thousand pounds, to be recovered summarily before a stipendiary magistrate.

cf. Act No. 45, 1898, s. 141.

Cost of maintenance of patient may be recovered.

79. The cost to the Crown of the maintenance of a patient shall constitute a debt due to the Crown and shall be recoverable accordingly from the patient or his estate:

Provided that if the Master considers that undue hardship would be occasioned by the enforcement of such debt or other circumstances so warrant he may in his discretion either forego the debt altogether or accept a smaller sum in satisfaction thereof.

Court may direct Master to report as to mental health of any patient.

80. The Court may direct the Master to personally examine any patient, and take evidence and call for information as to the mental health of such patient, and report thereon to the Court, and the Court may make orders for and with respect to—

cf. *Ibid.* s. 148.

(a) the appointment of a guardian or otherwise for the protection, care, and management of the person or of the estate, or of the person and estate, of any patient who by any such report is found to be a mentally ill person; such guardian, according to the nature of his appointment, to have the same powers and authorities, and be subject to the same control and liabilities, as a committee of the person and estate of a protected person appointed under this Act;

(b) the appointment of a receiver or otherwise for the protection, care and management of the estate of such patient; such receiver to have the same powers and

and authorities and be subject to the same control and liabilities as a receiver of the estate of a protected person appointed under this Act;

(c) the application of the income of such patient or a sufficient part thereof for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such patient, and of or in connection with the said examination by the Master and the obtaining of such orders by the Court;

(d) the investment or other application for the purpose of accumulation or otherwise of the surplus (if any) of such income as lastmentioned for the use of such patient, his wife, or children as to the Court may seem fit.

Division 3.—*Management of Estates of Certain Persons not being Patients.*

81. (1) The Court may order that any property of a protected person be sold, charged, mortgaged, dealt with, or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to all or any of the purposes following:— Power to raise money for certain purposes. cf. Act No. 45, 1898, s. 149.

(a) payment of such protected person's debts or engagements;

(b) discharge of any incumbrance on his property;

(c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit;

(d) payment of or provision for the expenses of his future maintenance;

(e) payment of the costs of any proceeding under this Act, or of any sale or other disposition made under this Act.

(2) In case of a charge or mortgage being made under this Act for the expenses of future maintenance the Court may direct the same to be payable, either contingently, if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as the Court thinks expedient.

Powers exercisable by committee under order of Court.

cf. Act No. 45, 1898, s. 150.

82. The Court may by order authorise and direct the committee of the estate of a protected person to do all or any of the following things: —

(a) sell any property belonging to such protected person;

(b) make exchange or partition of any property belonging to such protected person, or in which he is interested, and give or receive any money for equality of exchange or partition;

(c) carry on any trade or business of such protected person;

(d) grant leases of any property of such protected person for building, agricultural or other purposes;

(e) surrender any lease and accept a new lease;

(f) accept a surrender of any lease and grant a new lease;

(g) execute any power of leasing vested in such protected person having a limited estate only on the property over which the power extends;

(h) perform any contract relating to the property of such protected person entered into by him before he became a protected person;

(i) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to such protected person;

(j)

(j) exercise any power or give any consent required for the exercise of any power where the power is vested in such protected person for his own benefit, or the power of consent is in the nature of a beneficial interest in such protected person;

(k) sequestrate the estate of such protected person under the provisions of the bankruptcy laws;

(l) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts;

(m) bring and defend actions, suits, and other proceedings on behalf of such protected person.

Property exchanged and renewed lease to be to same uses as before.

83. Any property taken in exchange and any renewed lease accepted pursuant to this Act on behalf of a protected person under the powers of this Act, shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

cf. Act No. 45, 1898, s. 151.

Extent of leasing power.

84. (1) The power to authorise leases of a protected person's property under this Act shall extend to property of which the protected person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the protected person, and all persons entitled in remainder and reversion expectant upon the estate tail of the protected person including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the protected person shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the protected person or his committee would have had.

cf. *Ibid.* s. 152.

(2) Leases authorised to be granted and accepted by or on behalf of a protected person under this Act may be for such number of lives or such term of years at such rent and subject to such reservations, covenants, and conditions as the Court may order.

(3)

(3) Fines or other payments on the renewal of leases may be paid out of the estate of the protected person, or charged with interest on the leasehold property, as the Court may order.

85. (1) Any patient, protected person or incapable person, his heirs, next of kin, devisees, legatees, executors, administrators, and assigns shall have the same interest in any moneys or other property arising from any sale, mortgage, charge, disposition of any property or other dealing therewith under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made, and the surplus moneys or other property shall be of the same nature as the property sold, mortgaged, charged, disposed of or dealt with.

Interest in property of certain persons not to be altered.

cf. Act No. 45, 1898, s. 153.

(2) Moneys received for equality of partition and exchange, and all fines, premiums, and sums of money received upon the grant or renewal of a lease where the property, the subject of the partition, exchange, or lease was real estate of the patient, protected person or incapable person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate, except in the case of fines, premiums and sums of money received upon the grant or renewal of leases of which the patient, protected person or incapable person was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the patient, protected person or incapable person.

(3) In order to give effect to the foregoing provisions of this Act the Court may make such orders and direct such conveyances, deeds, and things to be executed and done as it thinks fit.

Expenses of improvements may be charged on estate. cf. Act No. 45, 1898, s. 154.

86. (1) The Court may order that the whole or any part of any moneys expended or to be expended under its order for the permanent improvement, security, or advantage of the property of a protected person or of any part thereof, shall with interest be a charge upon the improved property or any other property of the protected person, but so that no right of sale or foreclosure during the lifetime of the protected person shall be conferred by the charge, and the interest shall be kept down during his lifetime out of the income of his general estate as far as the same is sufficient to bear it.

(2) The charge may be made either to some person advancing the money, or, if the money is paid out of the protected person's general estate to some person as a trustee for him as part of his personal estate.

Court may order certain estates to be applied for maintenance. cf. *Ibid.* s. 155.

87. Where the net amount or net estimated value of the property of any protected person does not exceed the sum of five hundred pounds, the Court may order the amount of the property or the produce thereof when realised to be paid or transferred to some fit person, to be applied in or towards the maintenance of the protected person, either at the discretion of such fit person, or in such manner, and subject to such control as the Court may direct, and for the purpose of giving effect to any such order the Court may order any real estate or other property whatsoever of the protected person to be sold, and a valid conveyance or transfer thereof to be executed or made by such fit person as it shall direct.

Application of income for temporary maintenance. cf. *Ibid.* s. 156.

88. (1) Where it appears to the Court that there is reason to believe that the mental illness of any protected person is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of such protected person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income, or of ready money belonging to the protected person, and standing to his account with a banker

banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as it may think proper for the temporary maintenance of the protected person and the members of his immediate family who are dependent upon him for maintenance, and may order the payment of any such sum of money as aforesaid, or any part thereof, to some fit person, and may direct the same to be paid to such fit person accordingly, and when received to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid.

(2) The receipt in writing of the person named in the order to whom payment is to be made for any moneys payable to him by virtue thereof shall effectually discharge the banker, agent, or other person paying the same from the moneys therein respectively expressed to be received.

(3) The person so receiving any moneys by virtue of this section shall pass an account thereof before the Master when required.

89. Where a person, being a member of a partnership, becomes a protected person the Court may, by order, dissolve the partnership.

Court may dissolve partnership.

cf. Act No. 45, 1898, s. 157

90. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of a protected person, execute, make, and do all such conveyances, deeds, transfers, and things for giving effect to any order under this Act as the Court directs; and every such conveyance, deed, transfer, and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

Power to carry orders into effect.

cf. *Ibid.* s. 158.

91.

Committee may act as trustee or guardian in certain cases.

cf. Act No. 45, 1898, s. 159.

91. Where a power is vested in a protected person in the character of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the committee of the estate, in the name and on behalf of the protected person, under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

Appointment of new trustees by committee.

cf. *Ibid.* s. 160.

92. Where under this Act the committee of the estate, under order of the Court, exercises in the name and on behalf of a protected person a power of appointing new trustees vested in him the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same rights and powers as they would have had if the order had also been made by the Supreme Court under any law for the time being in force relating to trusts; and the Court may in such case where it seems to be expedient make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of any such law as aforesaid on the appointment thereunder of new trustees.

Temporary provision for maintenance.

cf. *Ibid.* s. 161.

93. In any case where, pending the appointment of a committee, it appears to the Master desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the protected person or any member of his family out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Master may, by certificate, authorise such banker or other person to pay to the person to be named in such certificate such sum as he certifies to be proper; and may, by such certificate, give any directions as to the proper application thereof for the protected person's benefit by that person, who shall be accountable for the same, as the Master directs.

94.

Transfer of stock belonging to certain persons.

cf. Act No. 45, 1898, s. 162.

94. Where any stock is standing in the name of or is vested in a protected person beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a protected person in trust for the protected person or as part of his property, and the committee dies intestate or himself becomes a mentally ill person or is out of the jurisdiction, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new committee or as he directs for the space of fourteen days after a request in writing for that purpose made by a new committee, then the Court may order some fit person to transfer the stock to or into the name of a new committee or otherwise, and also to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court directs.

Stock in name of mentally ill persons residing out of State may be ordered to be transferred.

cf. *Ibid.* s. 163.

95. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction that a declaration to the effect that such person is a mentally ill person, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock to or into the name of the curator or other person appointed as aforesaid or otherwise, and also to receive and pay over the dividends thereof as the Court thinks fit.

Who shall be appointed to make transfer.

cf. *Ibid.* s. 164.

96. Where an order is made under this Act for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the company, society or association in whose books the transfer is to be made.

Costs and remuneration may be paid out of estate.

cf. *Ibid.* s. 165.

97. The Court may order the costs and expenses of and relating to the petitions, applications, orders, directions, conveyances, and transfers to be presented or made in pursuance of this Part of this Act to be paid and raised out of or from the property, or the rents, income, or profits in respect of which the same respectively shall be presented or made in such manner as it may think proper; and the Court may order such sum by way of remuneration to be paid out of the estate to the committee of any protected person as the Court may think fit.

98.

98. Every conveyance, lease, surrender, transfer, charge, or other disposition made or accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons whomsoever; and this Act shall be a full indemnity and discharge to all persons for all acts and things done or permitted to be done in pursuance thereof, or of any order of the Court made or purporting to be made under this Act.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

cf. Act No. 45, 1898, s. 166.

99. Nothing in this Act contained shall subject any part of the property of a protected person to the debts or demands of his creditors, further or otherwise than as the same was immediately before the commencement of this Act subject thereto by due course of law.

Act not to subject property of protected persons to debts.

cf. *Ibid.* s. 167.

PART XII.

Special Provisions Relating to the Property of Mentally Ill Patients Residing Outside New South Wales.

100. (1) In this Part of this Act—

"Reciprocating state" means any part of Her Majesty's dominions outside New South Wales which has been declared under subsection two of this section to be a reciprocating state for the purposes of this Part of this Act.

Interpretation and application of Part.

cf. *Ibid.* s. 167A.

(2) Where the Governor is satisfied that the laws in force in any part of Her Majesty's dominions outside New South Wales are such as to enable powers to be exercised in that part in cases of patients residing in New South Wales substantially similar to the powers conferred by this Part of this Act in cases of mentally ill patients residing in that part, the

the Governor may by proclamation published in the Gazette declare that part to be a reciprocating state for the purposes of this Part of this Act, and thereupon that part shall become a reciprocating state within the meaning of this Part of this Act.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

(4) References in the foregoing provisions of this section to Her Majesty's dominions outside New South Wales shall be construed as including references to any territory which is under Her Majesty's protection and to any territory the subject of a trusteeship agreement approved by the General Assembly of the United Nations which is under the administration of a government of any part of Her Majesty's dominions.

Powers of Master as to property in New South Wales of mentally ill patients in reciprocating state.

101. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property and estates of mentally ill patients in any hospital or other institution situated in that state and authorised for the reception and care of mentally ill persons—

cf. Act No. 45, 1898, s. 167B.

(a) certifies in writing under his hand and seal to the Master that any person is a mentally ill patient residing in that state and is confined in any such hospital or other institution and that he is possessed of or entitled to or appears to be entitled to or interested in real or personal property in New South Wales; and

(b) by instrument in writing under his hand and seal authorises the Master to collect, recover, manage, sell or otherwise dispose of and administer such property or to make inquiry respecting such property,

the Master shall have and may exercise over and in respect of such property the same powers of collection, recovery, management, sale, disposition, administration, and inquiry as he

he would have had and may have exercised over such property if such mentally ill patient had been resident in New South Wales and a patient within the meaning of this Act; and the provisions of this Act apply in respect of such property accordingly.

(2) Where the Master has, pursuant to any such authority as is referred to in paragraph (b) of subsection one of this section and in the exercise of the powers conferred upon him by that subsection, received any moneys or properties, the Master may, after—

(a) payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and

(b) satisfying or providing for the following debts and claims of which he has notice, namely, debts of the mentally ill patient named in such authority owing to persons resident in New South Wales and the claims of persons so resident against that patient,

pay over or deliver the balance of such moneys or properties to the officer of the reciprocating state who signed such authority or his successor in office, without seeing to the application thereof, and without incurring any liability in respect of such payment over or delivery, and shall duly account to that officer or his successor for that balance.

PART XIII.

Court Visitors.

102. The Court may by general rule or special order:— Court may order protected or incapable persons to be visited.

(a) direct the Director or other fit person to visit any protected person or incapable person and to make a report in writing to the Court or a judge of the state

cf. Act No. 45, 1898, s. 168.

state of mind and bodily health and general condition, and also of the care and treatment of the person visited;

(b) 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 assets of the person visited, and as to the orders of the Court made in respect thereof;

(c) order that any fees and expenses connected with the visit be paid out of the estate of the person visited.

PART XIV.

MISCELLANEOUS PROVISIONS.

Offences in relation to certificates by medical practitioners.

103. A medical practitioner who signs any certificate in or to the effect of the form set out in Part I of Schedule Two or in Schedule Three without having personally examined the person to whom it relates, at the time specified in such certificate, for the purpose of ascertaining the condition of such person or who wilfully makes any false statement in any such certificate shall be guilty of an offence against this Act.

Medical certificates, requests, etc., may be amended.

104. (1) Any medical certificate, request, recommendation, direction, order, or other document, by virtue of which any person has been admitted to an admission centre, mental hospital or authorised hospital, and which is incorrect or defective in any particular, may, with the approval of the Director, and within twenty-eight days after the admission of such person, be amended by the person who has signed the same; and such medical certificate, request, recommendation, direction, order, or other document as so amended shall thereupon be deemed to have and always to have had effect from its original date.

(2)

(2) If such medical certificate, request, recommendation, direction, order, or other document is not so amended, the Director may order the discharge of the person so admitted as aforesaid; or direct the superintendent of such admission centre, mental hospital or authorised hospital to obtain a new medical certificate, request, recommendation, direction, order or other document which shall have and be deemed always to have had effect for all purposes as if it had been obtained, made, and signed on the date on which the medical certificate, request, recommendation, direction, order or other document upon which such person was admitted to such admission centre, mental hospital or authorised hospital was obtained, made and signed.

Patients absent without leave.

105. Where a patient absents himself from any admission centre, mental hospital or authorised hospital otherwise than in accordance with the provisions of this Act the superintendent or any officer, servant or other person employed in such admission centre, mental hospital or authorised hospital, member of the police force or any other person authorised by the Director or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised may escort such patient and return him to such admission centre, mental hospital or authorised hospital.

Penalty on superintendents, officers, etc., ill-treating patients.

106. Any superintendent, officer, servant or other person employed in an admission centre, mental hospital or authorised hospital who strikes, wounds, ill-treats, or wilfully neglects any patient or voluntary patient shall for every such offence, be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any period not exceeding six months, or to both such penalty and imprisonment:

Provided that nothing in this section contained shall prejudice or affect any civil responsibility of the offender arising out of such offence.

107.

107. The powers, authorities, duties and functions conferred or imposed upon a superintendent of or an official visitor to an admission centre, mental hospital or authorised hospital by or under this Act shall be exercised and performed by him only in respect of that admission centre, mental hospital or authorised hospital and the patients and voluntary patients therein.

Powers of superintendents and official visitors exercisable in respect of places to which they are appointed.

108. (1) (a) This section shall apply to leucotomy and such other operations or medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

Conditions applicable to performance or giving of certain operations or medical treatment upon or to patients.

cf. Act No 45, 1898, s. 179A.

(2) No patient shall be subjected to any operation or medical or therapeutic treatment to which this section applies—

(a) by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless the Director has consented to the performance of such operation or the application of such treatment; or

(b) by any other medical practitioner or practitioners unless the Director has consented to the performance of such operation or the application of such treatment by such practitioner or practitioners.

(3)

(3) The Director shall not give such consent unless—

(a) he is satisfied upon the report of a superintendent that such operation or treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated, or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient; and

(b) in the case of leucotomy and any other operation or medical or therapeutic treatment in respect of which a Consultative Committee has been constituted as hereinafter provided the appropriate Consultative Committee has recommended the subjection of the patient to such operation or medical or therapeutic treatment.

(4) No patient shall be subjected to any operation or medical or therapeutic treatment referred to in paragraph (b) of subsection three of this section if the person, on whom notice has been served by the Director as hereinafter provided, has within the time prescribed expressed his disapproval of such operation or medical or therapeutic treatment.

Such notice shall state the name of the patient proposed to be subjected to any such operation or medical or therapeutic treatment, the nature of such operation or treatment, and the time within which disapproval may be expressed.

Such notice shall—

(a) where the patient is married and not separated by order of a court or by agreement from his spouse, be served on the spouse;

(b) where the patient is not married or is separated by order of a court or by agreement, be served on the parents or the surviving parent of such patient;

(c) where there is no person on whom notice is required to be served under the foregoing provisions of paragraphs (a) and (b) of this subsection, or the Director is unable to ascertain particulars of the name

name and whereabouts of any person on whom notice is required to be so served, be served on such person as the Director considers to be the person in whose care, guardianship or custody the patient was prior to his admission to the admission centre, mental hospital or authorised hospital.

Where the Director has reason to believe that any disapproval expressed by any person in accordance with the foregoing provisions of this subsection has been unjustifiably or unreasonably expressed he may refer the matter to the Master for inquiry and determination. Any person who appears to the Master to be interested in the matter may be heard in person or by counsel at any such inquiry.

If the Master is of opinion that such disapproval has been expressed unjustifiably or unreasonably he may order that the patient be subjected to any such operation or medical or therapeutic treatment.

There shall be an appeal to the Full Court of the Supreme Court from any such order in such manner as may be prescribed by rules of Court.

(5) (a) There shall be constituted a Consultative Committee for the purposes of making recommendations to the Director relating to the subjection of patients to the operation of leucotomy.

(b) The Minister may in respect of any other operation or medical or therapeutic treatment to which the provisions of this section apply constitute a Consultative Committee for the purpose of making recommendations to the Director relating to the subjection of patients to such operation or medical or therapeutic treatment.

(c) Any Consultative Committee constituted pursuant to the provisions of this subsection shall consist of such medical practitioners and other persons as the Minister appoints.

(6)

(6) Where in the opinion of a superintendent the delay incurred in obtaining the consent of the Director to the performance or application of any operation or medical or therapeutic treatment to which this section applies would endanger the life of any patient such superintendent may—

(a) himself perform such operation or apply such treatment; or

(b) by writing under his hand consent to the performance of such operation upon or the application of such treatment to such patient by any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or by any other medical practitioner or practitioners named in such consent.

Where a superintendent performs any operation or applies any treatment or consents to such performance or application in accordance with the provisions of this subsection he shall forthwith report in writing to the Director the circumstances of the case.

(7) Any consent given by the Director or of a superintendent under this section shall, for the protection of any medical practitioner performing any operation or applying any treatment in accordance with such consent and of any person concerned with the performance of such operation or with the application of such treatment, have the same effect as if such consent had been given by the person operated upon or treated while he was not a mentally ill person or in the case of a minor, as if such consent had been given by his parents.

Certain operations or treatments may be performed or applied without consent of patients.

109. (1) (a) This section shall apply to electro convulsive therapy, electro narcosis therapy and insulin shock and such operations and medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b)

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2) A patient may be subjected to any operation or medical or therapeutic treatment to which this section applies by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or any other medical practitioner or practitioners notwithstanding that the patient or any other person legally entitled to consent to the operation or medical or therapeutic treatment of the patient has not consented thereto.

(3) No operation or medical or therapeutic treatment to which this section applies shall be performed on or applied to a patient unless the superintendent has determined that such operation or medical or therapeutic treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient.

Any such determination shall be expressed in writing.

110. (1) (a) Any proclamation under section one hundred and eight or one hundred and nine of this Act or subsection two of this section shall— Ancillary provisions to ss. 108 and 109.

(i) be published in the Gazette;

(ii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;

(iii)

(iii) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) The day so appointed shall not be earlier than the day next following—

(i) the fifteenth sitting day after such proclamation has been laid before both Houses of Parliament if notice of motion for the disallowance of such proclamation is not given in either House of Parliament within fifteen sitting days after such proclamation has been laid before such House; or

(ii) the day upon which a notice of motion for the disallowance of such proclamation duly given in either House of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days.

(c) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation such proclamation shall not take effect.

(2) Any proclamation under section one hundred and eight or one hundred and nine of this Act may be revoked by the Governor by proclamation.

(3) No action claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against Her Majesty, the Director or a superintendent or any member of a medical staff or medical practitioner referred to in sections one hundred and eight and one hundred and nine of this Act for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the enactment of those sections or the giving of any consent by the Director or a superintendent or as a result of any operation or treatment performed or applied in accordance with the provisions of those sections.

(4)

(4) In sections one hundred and eight and one hundred and nine of this Act "superintendent" in relation to an authorised hospital the holder of the license for which is not a medical practitioner means any medical practitioner visiting such authorised hospital pursuant to the provisions of section eleven of this Act.

Penalties.

111. (1) Any person guilty of an offence against this Act shall, except where otherwise expressly provided, be liable to a penalty not exceeding one hundred pounds.

(2) Any such penalty may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Regulations.

112. (1) The Governor may make regulations, not inconsistent with this Act, for and with respect to : —

(a) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act;

(b) prescribing the keeping and form of such books, records, registers or other documents or the furnishing of such reports or statistics as may be necessary or convenient for the administration of this Act;

(c) prescribing the duties, responsibilities, obligations and liabilities of superintendents and medical officers;

(d) all matters relating to correspondence by and with patients including the authorisation of the perusal and withholding of such correspondence;

(e) the general administration of admission centres and mental hospitals;

(f) all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

(2) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULES.

SCHEDULE ONE.

No. of Act.	Name of Act.	Extent of Repeal.
1898, No. 45	Lunacy Act of 1898	The whole.
1924, No. 10	Crimes (Amendment) Act, 1924	Section twenty-nine.
1934, No. 39	Lunacy (Amendment) Act, 1934	The whole.
1937, No. 37	Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937.	Section four.
1944, No. 19	Public Service (Amendment) Act, 1944.	Section three.
1944, No. 38	Lunacy (Amendment) Act, 1944	The whole.
1945, No. 33	Lunacy (Amendment) Act, 1945	The whole.
1946, No. 38	Lunacy (Amendment) Act, 1946	The whole.
1947, No. 41	Jury (Amendment) Act, 1947 ...	Subsection three of section eight.
1949, No. 43	Mental Institution Benefits Agreement Act, 1949.	Section three.
1952, No. 31	Lunacy (Amendment) Act, 1952 ...	The whole.
1955, No. 3	Lunacy (Amendment) Act, 1955 ...	The whole.

SCHEDULE TWO.

MENTAL HEALTH ACT, 1958.

MEDICAL CERTIFICATE.

Part I.

I, ..., of
(*name in full*)
..... (Medical Practitioner)
(*address*)
do hereby certify that on the ..... day of .....
19 , at .....
(*state place where examination took place*)
I personally examined .....
(*name of person in full*)
and I am of the opinion that the said person is a mentally ill person and is a suitable case for admission to the Admission Centre at ..... for observation and treatment.
(*name of Institution*)

* In my opinion the said person is:—

(a) suicidal
(b) dangerous to others
(c) unable to care for himself
(d) not under proper care and control.

* Strike out and initial any of the conditions that are not applicable.

The following treatment and medication (*if any*) has been administered in respect of the mental illness of the said ....., viz.

So far as I am aware—

(a) the bodily health and condition of the said .... is ..... and

(b) the said ..... * has / has not suffered any recent injury.

* Strike out words inapplicable.

If the said ..... has suffered recent injury the particulars of such injury are as follows:—

Made and signed this ..... day of ....., 19 .

Signature .....

Part II.

If the assistance of a member of the Police Force is required this Part of the Schedule should be completed.

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the said ..... to the Admission Centre at .....

Made and signed this ..... day of ..... 19 .

Signature .....

SCHEDULE

SCHEDULE THREE.

MENTAL HEALTH ACT, 1958.

I, the undersigned, being a medical practitioner, hereby certify that I, on the ..... day of ....., 19 , at *..... ..... separately from any other medical practitioner, personally examined .... of †....., whose occupation is ..... and that the said ..... is mentally ill and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:—

(1) Facts indicating mental illness observed by myself.

(2) Other facts (if any) indicating mental illness communicated to me by ‡

Dated at ..... this ..... day of ....., 19 .

Signature .....

Place of abode .....

* Insert name and address of place of examination.

† Insert residence.

‡ State full names and addresses of every communicant.

SCHEDULE FOUR.

MENTAL HEALTH ACT, 1958.

WHEREAS it has been duly certified under section ..... of the Mental Health Act, 1958, that ..... a prisoner in the ..... is mentally ill, I, the Minister for Health, exercising the powers conferred upon me under the said Act, hereby order that the said ..... be removed to the Mental Hospital at ..... to remain there until he is certified to be not mentally ill and dealt with in accordance with the said section.

Given under my hand the ..... day of ....., 19 .

.....

Minister for Health.

Sydney: V. C. N. Blight, Government Printer—1958

[6*s.* 3*d.*]

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

ALLAN PICKERING,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 3 *December,* 1958.

The LEGISLATIVE COUNCIL *has this day agreed to this Bill with Amendments.*

Clerk of the Parliaments.

Legislative Council Chamber,
Sydney, December, 1958.

New South Wales

ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. , 1958.

An Act to make provision with respect to the care, treatment and control of persons who are mentally ill and the management of their estates; to repeal the Lunacy Act of 1898 and certain other Acts; and for purposes connected therewith.

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:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Mental Health Act, 1958". Short title and commencement.

NOTE.—The words to be *omitted* are *ruled through;* those to be *inserted* are printed in **black letter.**

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows : —

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–8.

PART III.—ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 9–11.

PART IV.—ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 12–15.

PART V.—DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION—*ss.* 16–20.

PART VI.—VOLUNTARY PATIENTS—*ss.* 21–22.

PART VII.—MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES—*ss.* 23–33.

PART VIII.—WELFARE OFFICERS—*s.* 34.

PART IX.—OFFICIAL VISITORS—*ss.* 35–36.

PART X.—PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES—*ss.* 37–50.

PART XI.—MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS—*ss.* 51–99.

Division 1.—*General Powers and Duties of Master*—*ss.* 51–58.

Division 2.—*Powers and Duties of Master in Respect to Estates of Patients*—*ss.* 59–80.

Division 3.—*Management of Estates of Certain Persons not being Patients*—*ss.* 81–99.

PART XII.—SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES—*ss.* 100–101.

PART

PART XIII.—COURT VISITORS—*s.* 102.

PART XIV.—MISCELLANEOUS PROVISIONS—*ss.* 103–112.

SCHEDULES.

3. (1) The several Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) (a) The persons who immediately before the commencement of this Act held office as the Inspector-General of the Insane, Deputy Inspector-General and Deputy Master in Lunacy shall be deemed as from such commencement to have been appointed by the Governor as the Director, Deputy Director and Deputy Master in the Protective Jurisdiction of the Supreme Court, respectively.

(b) All persons who immediately before the commencement of this Act held office as superintendents, deputy superintendents, medical officers or otherwise under the Acts hereby repealed shall continue to hold office as such as from such commencement.

(c) All persons who immediately before the commencement of this Act held office as official visitors under the Acts hereby repealed shall be deemed to have been appointed as such under this Act:

Provided that any such official visitor who has at such commencement attained the age of seventy years shall upon such commencement be deemed to have vacated his office as such.

(d) All reception-houses appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be admission centres.

(e) All hospitals for the insane or for the criminal insane appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be mental hospitals.

(f)

(f) Any house for the reception of insane patients in respect of which a license granted under the Acts hereby repealed is in force at the commencement of this Act shall be deemed to be licensed as an authorised hospital until such license would have expired but for the provisions of this Act or is sooner revoked in like manner as a license for an authorised hospital may be revoked.

(g) All persons who immediately before the commencement of this Act were incapable persons, insane patients or patients, and insane persons within the meaning of the Acts hereby repealed shall respectively be deemed to be incapable persons, patients and protected persons within the meaning of this Act.

(h) The care, protection, administration and management of the estate of any person which immediately before the commencement of this Act was exercised by a committee of the estate of such person, a person appointed to undertake the care and management of such estate or the Master in Lunacy may continue to be exercised by such committee, person so appointed or the Master under and subject to the provisions of this Act.

(i) All rules of Court, regulations and proclamations made or deemed to have been made under the Acts hereby repealed and in force at the commencement of this Act shall, until varied or rescinded under this Act, continue in force and shall be deemed to have been made under this Act.

(j) All proceedings initiated, pending or part heard under the Acts hereby repealed at the commencement of this Act shall be continued as if such proceedings had been taken or initiated under this Act.

4. In this Act, unless the context or subject matter otherwise indicates or requires: — Interpretation.

"Admission centre" means a place appointed to be an admission centre under this Act.

"Authorised

"Authorised hospital" means a hospital in respect of which a license granted to any person under Part III of this Act is for the time being in force.

"Committee" means committee appointed under this Act.

"Continued treatment patient" means a patient in respect of whom an order has been made under section fourteen of this Act that he be reclassified as a continued treatment patient and be detained in an admission centre, mental hospital or authorised hospital.

"Court" means the Supreme Court in its Protective Jurisdiction.

"Director" means Director of State Psychiatric Services appointed under this Act.

"Incapable person" means any person who is proved to the satisfaction of the Court under section thirty-nine of this Act to be through mental infirmity, arising from disease or age, incapable of managing his affairs.

"Judge" means judge of the Court.

"Justice" means justice of the peace.

"Manager" means the person appointed under section thirty-nine of this Act to undertake the care and management of the property of an incapable person.

"Master" means Master in the Protective Jurisdiction of the Supreme Court.

"Mental hospital" means a place appointed to be a mental hospital under this Act.

"Mentally ill person" means a person who owing to mental illness requires care, treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs and "mentally ill' has a corresponding meaning.

"Patient" means any person admitted to and detained in any admission centre, mental hospital, or authorised hospital in accordance with the provisions of this Act and includes any person so admitted and detained while absent from such admission centre, mental hospital or authorised hospital either with or without leave of absence, but does not include a voluntary patient or, in Part V of this Act, except as provided in subsection three of section nineteen of this Act, a person detained in a mental hospital pursuant to Part VII of this Act.

"Prescribed" means prescribed by this Act or the regulations.

"Prison" means prison within the meaning of the Prisons Act, 1952.

"Protected person" means a person in respect of whom a declaration under section thirty-eight of this Act is in force.

"Regulations" means regulations made under this Act.

"Schedule" means Schedule to this Act.

"Stock" means any share or other interest in any company, society or association, and any fund, annuity or security transferable in books kept by any company, society or association, or transferable by deed alone, or by deed accompanied by other formalities, and any money payable for the discharge or redemption thereof, and any share or interest therein.

"Superintendent" means superintendent of any admission centre, mental hospital or authorised hospital.

"Tribunal" means a Mental Health Tribunal constituted under section thirteen of this Act.

"Voluntary patient" means any person who has been admitted to an admission centre, mental hospital or authorised hospital under section twenty-one of this Act.

"Welfare officer" means a person appointed as a welfare officer under section thirty-four of this Act.

5. As from the commencement of this Act, in the construction, and for the purposes, of any Act, by-law, regulation, ordinance or any other instrument of the same or a different kind or nature, any reference to, or to be read, deemed and taken to refer to— References to certain words and expressions —how to be construed.

(a) any word or expression, within the meaning of the Acts hereby repealed, specified in the first column of the Schedule hereunder or to any like word or expression shall be read, deemed and taken to refer to the word or expression appropriate thereto specified in the second column of such Schedule unless the context or subject matter otherwise indicates or requires.

THE SCHEDULE.

First Column.	Second Column.
Insane, lunatic, insane patient, patient, incapable person, insane person, committee of the estate of an insane person, manager of the estate of an incapable person, Master in Lunacy, Lunacy Act of 1898, Inspector-General of the Insane, Deputy Inspector-General, Chief Clerk in Lunacy, Supreme Court in its Lunacy Jurisdiction, hospital for the insane, hospital for the criminal insane, reception house, licensed house.	Mentally ill, mentally ill person, patient, incapable person, protected person, committee of the estate of a protected person, manager of the estate of an incapable person, Master in the Protective Jurisdiction of the Supreme Court, Mental Health Act, 1958, Director, Deputy Director, Chief Clerk in the Protective Jurisdiction of the Supreme Court, Supreme Court in its Protective Jurisdiction, mental hospital, admission centre, authorised hospital.

(b) any of the provisions of the Acts hereby repealed shall be read, deemed and taken to refer to the corresponding provisions (if any) of this Act.

6.

6. There shall be a Protective Jurisdiction of the Supreme Court. Protective Jurisdiction of Supreme Court.

The jurisdiction which immediately before the commencement of this Act was exercisable by the Supreme Court in its Lunacy Jurisdiction shall be exercised by the Supreme Court in its Protective Jurisdiction.

PART II.

ADMINISTRATION.

7. (1) The Governor may appoint a Director of State Psychiatric Services and a Deputy Director of State Psychiatric Services, who shall have and may exercise and perform all the powers, authorities, duties and functions of the Director during his absence for any cause whatsoever. Director of State Psychiatric Services.

(2) The Director shall from time to time visit and inspect every admission centre, mental hospital and authorised hospital with or without previous notice and at any time of the day or night as he thinks fit.

The Director may at any time make such inspections, investigations, and inquiries as he deems necessary, and shall make such inspections, investigations and inquiries as are directed by the Minister, with respect to the care, treatment or control of patients and voluntary patients or with respect to the management of any admission centre, mental hospital or authorised hospital.

(3) (a) The Director visiting any admission centre, mental hospital or authorised hospital may, by notice in writing, require any person to furnish him with such information as he requires concerning any of the matters with respect to which the Director is by this Act authorised to make inspections, investigations or inquiries or to attend and give evidence before him concerning any such matters, and to produce all books, documents or other papers whatever in such person's custody or under his control relating thereto.

(b)

(b) The Director may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he may administer an oath.

(c) Any person who without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Director or to answer truly and fully any questions put to him, or to produce any book, document or papers required of him by the Director, shall be guilty of an offence against this Act.

(4) (a) Any Director or Deputy Director who has any pecuniary interest, directly or indirectly, in any authorised hospital shall be deemed guilty of misconduct within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

(b) A Director or Deputy Director shall not sign any certificate or recommendation for the admission of any patient into or for the further observation and treatment of any patient in any admission centre, mental hospital or authorised hospital.

(5) The Director shall furnish to the Minister an annual report in writing as to the state and condition of the several admission centres, mental hospitals and authorised hospitals and as to the care of the patients and voluntary patients therein, and as to such other particulars as he thinks fit, and a true copy of such report shall forthwith be laid before Parliament if then in session, or if not then in session, within twenty-one sitting days after the commencement of the next session of Parliament.

Medical superintendents.

8. The Governor may appoint a medical superintendent for each admission centre and mental hospital and if he thinks fit a deputy medical superintendent therefor. No person shall be so appointed unless he is a medical practitioner.

A deputy medical superintendent shall have and may exercise and perform all the powers, authorities, duties and functions of the superintendent during his absence for any cause whatsoever.

PART

PART III.

ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Admission centres.

9. The Governor may, by notification in the Gazette, appoint any place to be a place for the admission and temporary treatment of mentally ill persons and every such place shall be an admission centre for mentally ill persons. Any such appointment may be revoked in like manner.

Mental hospitals.

10. The Governor may, by notification in the Gazette, appoint any place to be a mental hospital and in and by such notification may assign a name to such hospital. Any such appointment may be revoked in like manner.

Authorised hospitals.

11. (1) The Minister on the recommendation of the Director may, subject to the provisions hereinafter contained, by writing under his hand in or to the effect of the prescribed form grant to any person or to two or more persons jointly, a license to keep a hospital for the admission and treatment of a number of patients and voluntary patients not exceeding the number specified in such license.

Any such license shall be in force for a period of twelve months but may be renewed from time to time for a further period of twelve months.

(2) Applications for a license under this section shall be made to the Minister, shall be in or to the effect of the prescribed form and shall be accompanied by a plan of the premises in respect of which the license is desired.

(3) The Minister may, for good cause, revoke any such license. One month's notice in writing of the proposed revocation shall be given by the Minister to the holder of such license.

(4) If after the expiration of two months from the termination of a license, whether by effluxion of time or revocation thereof, there is in any authorised hospital in respect of which such license has so terminated any patient or voluntary patient, every person keeping such hospital shall be guilty of an offence against this Act.

(5) No person (unless he is a person who derives no profit therefrom, or a committee, or manager, or otherwise authorised under this Act) shall receive to board or lodge in any house, or take the care or charge of, any patient or voluntary patient.

(6) The holder of a license under this section shall where the authorised hospital in respect of which he holds such license—

(a) has more than one hundred patients and voluntary patients have at all times a medical practitioner resident therein;

(b) has more than fifty but not more than one hundred patients and voluntary patients cause a medical practitioner to attend such authorised hospital daily;

(c) has fifty or less patients and voluntary patients cause a medical practitioner to attend such authorised hospital at least twice a week, or where such number of patients and voluntary patients is less than ten and the Minister authorises the holder of the license to cause a medical practitioner to attend such authorised hospital at specified intervals less frequently than twice a week cause a medical practitioner to attend accordingly.

The medical practitioner resident in an authorised hospital pursuant to paragraph (a) of this subsection shall be the superintendent of such hospital. Where there is no medical practitioner resident in any authorised hospital the holder of the license for such hospital shall be the superintendent of such hospital.

(7) The superintendent of any authorised hospital shall cause to be kept such records and furnish to the Director such particulars as are prescribed in connection with the admission, treatment, discharge, removal, absence with or without leave or death of every patient and voluntary patient admitted to such authorised hospital.

(8) The holder of a license shall not make or cause to be made any additions or alterations to the authorised hospital for which he holds such license without the approval in writing of the Minister.

PART IV.

ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Procedure for admitting persons to admission centres.

12. (1) A person may be admitted to and detained in an admission centre—

(a) upon the certificate of a medical practitioner who is of the opinion that such person is a mentally ill person;

(b) upon a written request to be so admitted and detained made by him to the superintendent of such admission centre;

(c) upon a written request for him to be so admitted and detained made to the superintendent of such admission centre by a relative or friend of such person;

(d) where he is taken to such admission centre by a member of the police force and a copy of an order, relating to such person, made by a justice under subsection two or three of this section is handed to the superintendent of such admission centre by such member of the police force;

(e) where he is taken to such admission centre by a member of the police force who in writing informs the superintendent of such admission centre that such

such member believes such person to be a mentally ill person and that such member found such person wandering at large or committing some offence against the law or in circumstances which reasonably led him to believe that such person was about to commit some offence against the law:

Provided that a person admitted to or detained in an admission centre pursuant to paragraph (b), (c), (d) or (e) of this subsection shall be examined by the superintendent or a medical officer attached to such admission centre as soon as practicable after his admission thereto and shall not be detained therein after such examination unless such superintendent or medical officer certifies that in his opinion such person is a mentally ill person.

(2) Where a person informs a justice on oath that—

(a) he believes any other person to be a mentally ill person, and

(b) such other person is without sufficient means of support, or is wandering at large, or has been discovered committing some offence against the law or in circumstances which may reasonably lead a person to suspect that such other person was about to commit some offence against the law,

such justice may by order under his hand require a member of the police force to apprehend such other person and to take him to the nearest convenient admission centre.

(3) A member of the police force or welfare officer shall, and any other person may, if he believes that a person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the care and charge of him, so inform a justice on oath. Such justice shall either himself visit and examine the person in respect of whom he has been informed as aforesaid and make inquiry into the case, or by order under his hand direct and authorise some medical practitioner to visit and examine such person and report in writing

writing to such justice his opinion as to the matters of which such justice has been informed as aforesaid. If upon such visit, examination and inquiry by such justice, or upon the report of such medical practitioner it appears to such justice that such person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the control of him, such justice may by order under his hand require any member of the police force to take such person to the nearest convenient admission centre.

(4) The superintendent of an admission centre shall as soon as practicable after the admission of a person to such admission centre cause such person to be examined by two medical practitioners separately and apart from each other.

If either of such two medical practitioners does not recommend that further observation and treatment of such person in a mental hospital is necessary the superintendent shall cause such person to be examined by another medical practitioner.

Where the superintendent is not a person who gave a certificate pursuant to the proviso to subsection one of this section in respect of such person, such superintendent may be one of the medical practitioners aforesaid.

A medical practitioner upon whose certificate or request a person has been admitted to an admission centre shall not make any examination of such person for the purposes of this subsection.

(5) If after examination as aforesaid two medical practitioners recommend that further observation and treatment of such person in a mental hospital or authorised hospital is not necessary, such person shall be discharged from such admission centre.

(6)

(6) If after examination as aforesaid two medical practitioners recommend that further observation and treatment in a mental hospital or authorised hospital is necessary, such superintendent shall cause such person to be brought as soon as conveniently may be before a stipendiary magistrate.

Such recommendation shall be in or to the effect of the prescribed form.

(7) Where a medical practitioner making any examination of any person as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon making any recommendation that further observation and treatment of such person is necessary as aforesaid disclose that fact and give particulars thereof in such recommendation.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(8) The superintendent shall give due notice to the nearest known relative or a friend of such person of his intention to have such person brought before a stipendiary magistrate.

(9) The stipendiary magistrate shall upon such person being brought before him hold an inquiry and if he is satisfied after consideration of the recommendations by the medical practitioners as aforesaid and such other evidence as may be placed before him, that such person is a mentally ill person, he shall—

(a) direct that such person be detained in an admission centre, or be admitted to and detained in a mental hospital or authorised hospital, to be specified in such direction for further observation and treatment as a temporary patient for such period not exceeding six months as may be specified therein; or

(b)

(b) order the discharge of such person to the care of any relative or friend who satisfies such stipendiary magistrate that such person will be properly taken care of.

Where pursuant to an inquiry as aforesaid such stipendiary magistrate is not satisfied that such person is a mentally ill person he shall order that such person be discharged from such admission centre.

Such stipendiary magistrate may suspend the execution of any such direction or order for any period not exceeding fourteen days, and may give such directions for the proper care and control of such person in the meantime as such stipendiary magistrate thinks fit.

Where any medical practitioner certifies in writing after examining such person that such person is not fit to be moved from the admission centre in which he is then detained, such person shall not be moved from such admission centre until the same or some other medical practitioner certifies in writing that such person is fit to be moved as aforesaid.

(10) Any certificate given by a medical practitioner for the purposes of paragraph (a) of subsection one of this section shall be in or to the effect of the form set out in Part I of Schedule Two.

Where a medical practitioner giving any certificate as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon giving that certificate disclose that fact and give particulars thereof in such certificate.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(11) Where a medical practitioner is of the opinion that the assistance of a member of the police force is desirable in conveying a person, in respect of whom such medical practitioner has signed any such certificate, to an admission centre he may endorse such certificate in or to the effect of Part II of the form set out in Schedule Two.

Any

Any member of the police force to whose notice any such endorsement is brought shall as soon as practicable convey or assist in conveying such person to an admission centre or cause or make arrangements for some other member of the police force to convey or assist in conveying such person to an admission centre.

(12) Any direction or order given by a stipendiary magistrate, and any order given by a justice, pursuant to any of the provisions of this section, shall be in or to the effect of the appropriate prescribed form and shall have effect according to its tenor.

Mental Health Tribunals.

13. For the purposes of this Part of this Act there shall be such number of Mental Health Tribunals as the Minister may constitute.

A Tribunal shall consist of :—

(a) a psychiatrist;

(b) a medical practitioner; and

(c) a barrister or solicitor.

Temporary patients to be brought before Tribunal.

14. (1) If at the expiration of six months from the date of his admission to an admission centre, mental hospital or authorised hospital a temporary patient is still detained in an admission centre, mental hospital or authorised hospital, the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment;

(b) whether such patient should be detained in an admission centre, mental hospital or authorised hospital for further observation and treatment as a temporary patient for such period not exceeding three months as the Tribunal shall specify in such determination; or

(c) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(2) Where a Tribunal has made a determination under paragraph (b) of subsection one of this section and the patient in respect of whom such determination has been made is at the expiration of the period specified in such determination still detained in an admission centre, mental hospital or authorised hospital the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment; or

(b) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(3) Any determination under this section shall be embodied in an order in the prescribed form and any such order shall have effect according to its tenor.

Medical reviews by superintendents.

15. It shall be the duty of the superintendent to medically examine or cause to be medically examined, at such intervals as may be prescribed, all continued treatment patients with a view to determining whether or not their continued detention in an admission centre, mental hospital or authorised hospital is necessary.

PART

PART V.

DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION.

Discharge of patients by superintendent.

16. The superintendent—

(a) may at any time, if in his opinion further observation and treatment of a patient is not required, discharge such patient;

(b) may discharge a patient pursuant to an application in that regard made by such patient or by any relative or friend of such patient, whether or not, in the case of an application made by a relative or friend of such patient, an undertaking in writing has been given to the superintendent by such relative or friend that such patient will be properly taken care of and will be prevented from injuring himself or other persons; and

(c) shall so discharge a patient where an order for the discharge of such patient has been made under this Act by the Tribunal, the Director, a judge, a stipendiary magistrate, or the official visitors.

Appeal against superintendent's refusal to discharge patient.

17. Where the superintendent has refused an application for the discharge of a patient as aforesaid, such patient, or relative or friend of such patient, making such application may, in the case of a temporary patient, if a period of three months has elapsed since the date of admission of such patient to an admission centre, mental hospital or authorised hospital, and in the case of a continued treatment patient, at any time, appeal against such refusal to the Director or any two or more official visitors.

The Director or official visitors to whom such appeal is made shall consider the circumstances of the case and the report on the case obtained from the superintendent (which report the superintendent shall give when required by the Director or any such official visitors) in which his reasons for refusing the application are stated, and may, if he or they think

think fit, order the discharge of such patient from the admission centre, mental hospital or authorised hospital, in which he is detained.

Judge may order discharge of patient.

18. Where a judge receives information upon oath, or has reason or cause to suspect that any person who is not a mentally ill person is detained in any admission centre, mental hospital or authorised hospital such judge may order the superintendent of such admission centre, mental hospital or authorised hospital to bring such person before him for examination at a time to be specified in such order, and if upon the examination of such person, and of such superintendent, and of any medical or other witnesses, it appears to such judge that such person is not a mentally ill person, such judge may order that such person be immediately discharged from such admission centre, mental hospital or authorised hospital.

Patient may be permitted to be absent in certain circumstances.

19. (1) The superintendent may allow a patient to be absent from an admission centre, mental hospital or authorised hospital for such period as the superintendent may think fit, or for such period and at such place and on such conditions as the superintendent may think fit for the benefit of the patient's health.

(2) Where any patient is so allowed to be absent and does not—

(a) at the expiration of such period return to the admission centre, mental hospital or authorised hospital from which he has been so allowed to be absent and a certificate of a medical practitioner certifying that the detention of such patient as a patient is no longer necessary is not received by the superintendent before the expiration of such period, or

(b) comply with any condition upon which he is so allowed to be absent,

such patient may at any time after the expiration of such period or non-compliance with any such condition, as the case may be, be apprehended by a member of the police force and returned to such admission centre, mental hospital or authorised hospital.

(3) In this section "patient" includes a person detained in a mental hospital pursuant to section thirty-two of this Act.

Transfer of patients.

20. The Director may by order in writing direct the transfer of a patient from the admission centre, mental hospital or authorised hospital in which he is detained to an admission centre, mental hospital or authorised hospital. Any such order for transfer shall be a sufficient authority for the transfer of such patient and for his being received into and detained in the admission centre, mental hospital or authorised hospital to which he is ordered to be transferred.

PART VI.

VOLUNTARY PATIENTS.

Voluntary patients.

21. (1) A person may be admitted to and detained in an admission centre, mental hospital or authorised hospital as a voluntary patient—

(a) where such person is of or above the age of twenty-one years, upon an application in that behalf made by him;

(b) where such person is under the age of twenty-one years, upon an application in that behalf made by the person in whose care and custody he may be.

Such application shall be in writing and be made to the superintendent of such admission centre, mental hospital or authorised hospital.

(2) A superintendent shall, subject to the provisions of this section, discharge a voluntary patient within seven days after an application in writing for his discharge has been made to such superintendent—

(a) where such voluntary patient is of or above the age of twenty-one years, by such voluntary patient or some person on his behalf;

(b)

(b) where such voluntary patient is under the age of twenty-one years, by the person upon whose application he was admitted to and detained in an admission centre, mental hospital or authorised hospital pursuant to subsection one of this section.

(3) No person shall be admitted to an admission centre, mental hospital or authorised hospital under this section unless the superintendent is satisfied that such person is likely to be benefited by his being so admitted for care and treatment as a voluntary patient.

(4) A superintendent may—

(a) grant leave of absence to any voluntary patient;

(b) discharge any voluntary patient;

(c) if the condition of the voluntary patient so requires cause such action to be taken as may be necessary to have such voluntary patient admitted to and detained in an admission centre as a temporary patient.

Master may take charge of estates of voluntary patients in certain circumstances.

22. (1) The Master may take charge of the estate of a voluntary patient—

(a) who is of or above the age of twenty-one years, if he is requested so to do by such voluntary patient;

(b) who is under the age of twenty-one years, if he is requested so to do by the person on whose application such voluntary patient was, pursuant to subsection one of section twenty-one of this Act, admitted to and detained in an admission centre, mental hospital or authorised hospital.

(2) Where, pursuant to this section, the Master takes charge of the estate of a voluntary patient, he shall have in respect thereof all the powers, authorities, duties and functions which he has under Part XI of this Act in respect of the estate of a patient.

PART

PART VII.

MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES.

Procedure where persons charged with offences are found to be mentally ill by a jury or acquitted on the ground of being mentally ill. cf. Act No. 45, 1898, s. 65.

23. (1) If any person indicted for any offence is mentally ill and, upon arraignment, is found to be so by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person is found by the jury, before whom he is tried, to be mentally ill, the judge before whom any such person is brought to be arraigned or tried as aforesaid may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody in such place and in such manner as to such judge may seem fit until he is dealt with as provided by section twenty-four of this Act.

(2) In all cases where it is given in evidence upon the trial of any person charged with any treason, felony or misdemeanour that such person was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill, and such person is acquitted, the jury shall be required to find specially whether such person was at such time mentally ill and to declare whether such person was acquitted by them on the ground that he was at such time mentally ill.

In this subsection "mentally ill" means, in relation to any person charged as aforesaid, so insane as not to be responsible, according to law, for the act or omission the subject of the charge.

(3) If the jury find that such person was at the time the act or omission the subject of the charge was done or omitted to be done mentally ill as aforesaid, the judge before whom such trial is had shall order such person to be kept in strict custody, in such place and in such manner as to such judge seems fit until the Governor's pleasure is known, and thereupon the Governor may give such order for the safe custody of such person during the Governor's pleasure in a prison as the Governor deems fit.

(4)

(4) Upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, the Governor, by warrant under his hand, may direct that such person be conveyed to and detained in a mental hospital during the Governor's pleasure.

Persons found to be mentally ill before trial to be sent to mental hospital.

cf. Act No. 45, 1898, s. 66.

24. (1) When any person committed to take his trial for any offence is certified by two medical practitioners to be mentally ill, such certificates to be in or to the effect of the form of Schedule Three, or is upon arraignment found by verdict to be mentally ill, the Minister may direct, by order under his hand in or to the effect of the form of Schedule Four, that such person be removed to, and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall order his removal to a prison in order to be tried for such offence or if he is not to be so tried order that he be discharged.

(2) Such detention for any period shall not operate as a bar to his subsequent indictment and trial for such offence.

Procedure in reference to certain persons under detention appearing to be mentally ill.

cf. *Ibid.* s. 67.

25. If any person while detained in any prison for debt, or in any prison, or other place of confinement, in consequence of any summary conviction or order by any justice or in default of bail, appears to be mentally ill, the Minister may, upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct, by order under his hand, that such person be removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall, if such person remains subject to be continued in custody, order his removal to the prison or other place from where he was taken, or to some other prison or place of confinement, or if such person does not remain subject to be continued in custody order that he be discharged.

Order by Attorney-General for trial of issue whether patient fit to plead if placed upon trial.

cf. Act No. 45, 1898, s. 67A.

26. (1) In any case in which a person charged with an offence for which he has not been tried (in this section referred to as "the person charged") is detained in a mental hospital the Attorney-General, if he is of opinion that the question whether the person charged is fit to plead if put upon his trial should be determined by a jury, may by order under his hand direct that the person charged be removed from such mental hospital to some prison appointed by the Attorney-General and specified in the order.

(2) Such order shall be a sufficient warrant for the removal of the person charged from the hospital in which he is detained and for his detention in the prison appointed by the Attorney-General and specified in the order.

(3) The Attorney-General may further order that a jury of twelve persons be empanelled for trial of an issue whether the person charged is fit to plead if placed upon his trial.

(4) The said issue shall be tried at a time and place appointed by the Attorney-General before a judge of the Supreme Court or a chairman of Quarter Sessions.

(5) The governor of the prison in which the person charged is detained shall procure the attendance of the person charged at the time and place appointed for the trial of the said issue.

(6) At the request of the Clerk of the Peace the Sheriff shall summon thirty-six persons, chosen by him from the list of jurors in the jurors' list for the jurors' district within which the place appointed for the trial of the said issue is situated, to attend at the time and place appointed for the trial of the said issue.

(7) A jury of twelve persons shall be empanelled from the jurors in attendance at the court and the said issue shall be tried in accordance with the procedure adopted at a criminal trial where upon the trial of an indictment a question is raised whether the accused is fit to plead. The judge presiding at the trial shall have power to make any order including a power of postponement and give any directions which

which in his opinion are necessary for the trial of the issue. The jurors empanelled to try the issue shall be sworn in such manner as the court shall direct.

(8) If the jury find that the person charged is not fit to plead he shall be returned to the hospital from which he was removed.

(9) If the jury find that the person charged is fit to plead he shall be returned to prison.

(10) If a bill is found against him he shall be placed upon his trial.

(11) If a bill is not found against him a certificate shall be issued by the Attorney-General to the judges of the Supreme Court in accordance with the provisions of section three hundred and fifty-eight of the Crimes Act, 1900, as amended by subsequent Acts, and any of the said judges may thereupon direct the gaoler in whose custody the person charged may be to discharge him from custody.

(12) At the trial of the said issue the person charged shall be entitled to give evidence on oath or to make an unsworn statement.

(13) If the jury find that the person charged is fit to plead and he is placed upon his trial he shall be entitled to set up the defence that he was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill.

In this subsection "mentally ill" has the meaning ascribed thereto in subsection two of section twenty-three of this Act.

Procedure on certain prisoners appearing to be mentally ill.

cf. Act No. 45, 1898, s. 68.

27. If any person while imprisoned in any prison, under any sentence of hard labour or imprisonment imposed otherwise than on the conviction or order of justices appears to be mentally ill the Minister may upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct by order under his hand in or to the effect of the form of Schedule Four, that such person be removed

removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall if such person remains subject to be continued in custody, order his removal to the prison from where he was taken, or to some other prison, or if such person does not remain subject to be continued in custody order that he be discharged.

Procedure on prisoners under sentence of death appearing to be mentally ill. cf. Act No. 45, 1898, s. 69.

28. If it is made to appear to the Minister by any means whatsoever that there is good reason to believe that any prisoner in confinement under sentence of death is then mentally ill, the Minister may appoint two or more medical practitioners to inquire into the mental health of such prisoner, and if on such inquiry such prisoner is found to be then mentally ill, the fact shall be certified in writing by such practitioners to the Minister, and on receipt of such certificate the Minister may, by order under his hand, direct that such prisoner be removed to and detained in a mental hospital until such prisoner is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall order that such person be removed to any prison or other place of confinement to undergo his sentence of death or to be dealt with according to law, as if no such order for his removal to and detention in a mental hospital had been made.

Governor may liberate on conditions. cf. *Ibid.* s. 72.

29. When any person is ordered to be kept in custody during the Governor's pleasure, any order made by the Governor in relation to the custody of such person may be renewed and varied from time to time or revoked; and the Governor may permit any such person or any person conveyed to and detained in a mental hospital pursuant to a direction by the Governor, not being a person under conviction and sentence, to be liberated from custody or such mental hospital, upon such terms and conditions as the Governor may think fit; and if any such term or condition is broken, such person may be retaken and dealt with as provided in section thirty of this Act.

Escaped mentally ill persons detained under this Part may be recaptured. cf. Act No. 45, 1898, s. 73.

30. In case of the escape of any person detained in a mental hospital pursuant to the provisions of this Part of this Act he may be retaken at any time by the superintendent, or any officer, servant or other person employed therein, or any member of the police force, or any other person authorised by the Minister or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised and shall be conveyed and admitted to and detained in such hospital.

Penalties for assisting or permitting escape. cf. *Ibid.* s. 74.

31. Any person who rescues any person being conveyed to or detained in any mental hospital pursuant to the provisions of this Part of this Act, and the superintendent or any officer, servant, or other person employed in any such hospital who, through wilful neglect or connivance, permits any person so detained therein pursuant to the provisions of this Part of this Act to escape therefrom, or conceals or abets or connives at any such escape, shall be guilty of an offence against this Act and shall be liable **upon conviction on indictment** to imprisonment for a period not exceeding three years or **upon summary conviction to imprisonment for a period not exceeding one year or to** a penalty not exceeding five hundred pounds or both such imprisonment and penalty.

Persons attempting to commit suicide and mentally ill not triable for the offence. cf. *Ibid.* s. 75.

32. Any person committed to take his trial for having attempted to commit suicide who is certified by two medical practitioners in or to the effect of the form of Schedule Three to be mentally ill shall forthwith be sent to and detained in a mental hospital and such person, when certified by the superintendent and Director, or by the superintendent and an official visitor, to be not mentally ill, shall be discharged from such hospital, and shall not be put upon his trial or be liable to any charge or indictment for having attempted such act of suicide.

Security conditions for persons detained in mental hospitals under this Part.

33. (1) Any person detained in a mental hospital pursuant to the provisions of this Part of this Act shall be subject to such security conditions as the Director may deem necessary.

(2)

(2) The Director may by order in writing direct the transfer of a person detained in a mental hospital pursuant to this Part of this Act to any other mental hospital. Any such order for transfer shall be a sufficient authority for the transfer of such person and for his being admitted to and detained in the mental hospital to which he is ordered to be transferred.

PART VIII.

WELFARE OFFICERS.

Appointment and duties of welfare officers.

34. (1) For the purposes of this Act the Governor may appoint such welfare officers as he deems necessary.

(2) The powers, authorities, duties and functions of a welfare officer shall be:—

(a) on the direction of a superintendent to escort and convey or assist in escorting and conveying a patient to a mental hospital, where such patient has been granted leave of absence from such mental hospital and such patient's return is desirable on account of a breakdown in his mental health;

(b) to escort and convey or assist in escorting and conveying patients from a mental hospital to another mental hospital or to a public hospital;

(c) to visit patients, who are on leave of absence from mental hospitals, or their relatives or friends for the purpose of advising them on matters pertaining to the welfare of such patients;

(d) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon him by or under this Act or as may be assigned to him by the Director.

PART

PART IX.

OFFICIAL VISITORS.

Appointment of official visitors.

35. (1) The Governor may appoint for every admission centre, mental hospital or authorised hospital, two or more official visitors, one of whom shall be a medical practitioner and one a stipendiary magistrate, barrister-at-law, or solicitor.

(2) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of an official visitor and such official visitor shall not in his capacity as such be subject to the provisions of any such Act.

(3) No person of or above the age of seventy years shall be appointed as an official visitor. An official visitor shall cease to hold office as such on the day upon which he attains the age of seventy years.

(4) Any two or more official visitors, one being a medical practitioner, shall visit the place for which they are appointed official visitors once at least every month with or without any previous notice, and at such hours of the day or night, and for such length of time as they think fit, and also at such other times as the Minister may direct.

(5) Any person who has any pecuniary interest, directly or indirectly, in an authorised hospital shall not be or act as an official visitor for any authorised hospital and no official visitor shall sign any certificate or request for the admission of any person to, or attend professionally upon, any patient in any admission centre, mental hospital or authorised hospital.

(6) Such official visitors, when visiting such admission centre, mental hospital or authorised hospital, shall, so far as practicable, inspect every part of the same and make such inquiries as they may deem necessary as to the care, treatment and control of the persons detained therein.

Duties of superintendents on visits by official visitors.

36. (1) The superintendent shall allow the official visitors visiting an admission centre, mental hospital or authorised hospital to have access to and inspect every part thereof and shall permit them to see and interview every person detained therein

therein, and shall give full and true answers to the best of his knowledge to all questions which the official visitors may ask in reference to the said admission centre, mental hospital or authorised hospital, and the persons detained therein, and shall produce to the official visitors such registers, books, records, orders, certificates, papers and other documents relating to the admission and discharge, care, treatment and control of persons detained therein, and furnish all such returns relating to any of the matters aforesaid, as may be required by such official visitors.

(2) The official visitors shall—

(a) examine and sign all registers, books and records produced to them in accordance with the foregoing provisions;

(b) on every visit to an admission centre, mental hospital or authorised hospital enter in the official visitors' book the fact of their visit with such observations as they think fit; and

(c) transmit to the Minister as soon as practicable after each such visit a report upon their visit containing such information as they deem necessary.

PART X.

Protected and Incapable Persons and Committees and Managers of Their Estates.

37. The Court shall, except on appeal as hereinafter provided, be holden by the Chief Judge or a judge in Equity, or by any other judge sitting for the Chief Judge in Equity during his absence from Sydney or illness or at his request: Constitution of Court. Act No. 45, 1898, s. 101.

Provided that any such judge may sit in chambers to determine all such matters as in his opinion may advantageously and with propriety be heard in chambers; and such judge when so sitting shall have the same powers and jurisdiction as in open court.

38. Where it is proved to the satisfaction of the Court that a person is mentally ill and incapable of managing his affairs, the Court may make a declaration to that effect, and may direct a reference to the Master to make inquiries concerning the property of such person, and may make all proper orders for rendering the property of such person, or the income thereof available for the payment of his debts and for the maintenance or benefit of himself and his family, and for carrying on his trade or business (if any), and may, if necessary, appoint, either with or without security, a committee of his estate, and also when desirable appoint a committee of his person.

Declarations of Court as to persons being mentally ill.
cf. Act No. 45, 1898, s. 102.

39. (1) Where it is proved to the satisfaction of the Court that any person is, through mental infirmity, arising from disease or age, incapable of managing his affairs, the Court may make all proper orders for rendering the property and income of the said person available for the payment of his debts and for the maintenance and benefit of himself and his family; and may make orders for the care and management of his property in all respects as if he were a protected person; and may, if necessary, appoint a manager, either with or without security, to undertake the care and management of his property under the order and direction of the Court.

Persons incapable of managing their affairs.
cf. *Ibid.* s. 103.

(2) The manager shall, subject to the said orders and directions and to the rules of Court, have the same powers and be subject to the same obligations and control as a committee, appointed under section thirty-eight of this Act, of the estate of a protected person, and the powers and provisions contained in this Act relating to the management and administration of the estates of protected persons shall apply to the estates of incapable persons.

40. Where it is proved to the satisfaction of the Court that any protected person or incapable person has recovered his mental health and is capable of managing his affairs, the Court may make a declaration to that effect, and may make all proper orders to give effect to such declaration, and to release the property of such person from the control of the Court

Superseding orders, etc. when person has recovered.
cf. *Ibid.* s. 104.

Court or the manager, as the case may be, and to discharge the committee of his estate and the committee (if any) of his person or the manager, as the case may be.

Mode of application. cf. Act No. 45, 1898, s. 105.

41. Applications under sections thirty-eight, thirty-nine and forty of this Act shall be made, and evidence by affidavit given in support thereof, in such manner as is prescribed by rules of Court:

Provided that every deponent may be cross-examined upon his affidavit either at the hearing or at such time and place as the Court may direct, and at such hearing the Court may receive or require the oral evidence of witnesses and such other proofs as may be deemed necessary.

Service of process. cf. *Ibid.* s. 106.

42. Notice of any applications under sections thirty-eight, thirty-nine and forty of this Act and of the evidence by affidavit to be given in support thereof shall be given to such persons, in such manner and within such time as may be prescribed by rules of Court.

Court may order inquiry before a jury. cf. *Ibid.* s. 107.

43. The Court in any case, instead of determining whether or not the person whose mental health is the subject of inquiry is mentally ill and incapable of managing his affairs, or is through mental infirmity, arising from disease or age, incapable of managing his affairs, may order that question to be determined by a jury; and thereupon the like proceedings for procuring the return of such jury shall be had and taken as provided by any law for the time being in force for the return of juries in the Supreme Court, and in every proceeding before a jury pursuant to this section the number of the jury shall be four, unless the Court order a jury of twelve.

Inquiries before jury. cf. *Ibid.* s. 108.

44. Where any such inquiry before a jury is ordered, the Court shall direct the question to be tried before a judge or the Master, or a commissioner specially appointed, who shall while so acting have for the purpose of the inquiry all the powers of the Supreme Court; and the trial of every such question and the verdict thereon shall be had and dealt with in all respects in accordance with any law for the time being in force relating to the trial of issues out of the Supreme Court.

After verdict Court may make declarations and orders.

45. When the verdict of the jury has been returned, unless a new trial is granted, the Court may make such declaration and orders as mentioned in sections thirty-eight and thirty-nine of this Act, as the case may require.

cf. Act No. 45, 1898, s. 109.

Examination of person whose mental health is in question.

46. On the hearing of any application under section thirty-eight or thirty-nine of this Act the person whose mental health is in question shall be examined by the Court; and on the trial of any such question as abovementioned there shall be a like examination by the jury before they consult as to their verdict, and every such examination shall take place in open court or in private, as may be deemed expedient:

cf. *Ibid.* s. 110.

Provided that, if it appears to the Court to be unnecessary or inexpedient that such person should be examined by the Court, or the jury, the Court may, in lieu of the examination aforesaid, direct the Master to personally examine the said person and report on such examination, or may dispense with any examination whatever.

Construction of references to commission of Lunacy and certain like expressions

47. Where in any Act or rule of Court or instrument, reference is made to a commission of Lunacy, or a writ in the nature of a writ de lunatico inquirendo, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission, the application and declaration or orders thereon in sections thirty-eight and forty of this Act mentioned, as the case may require, shall be taken to be intended by or comprehended in such reference.

cf. *Ibid.* s. 111.

Persons found mentally ill in places outside N.S.W.

48. When the Court is satisfied that any person has been found mentally ill and incapable of managing either himself or his affairs or both by any commission de lunatico inquirendo, or other legal inquiry in any part of the British Commonwealth of Nations outside New South Wales or in any other country to which the Governor by proclamation published in the Gazette extends the provisions of this section, the Court may direct a copy of the inquisition or finding on such commission or inquiry, duly certified by the proper officer of the Court or other authority into which such inquisition or finding has been returned

cf. *Ibid.* s. 112.

returned, to be filed of record in the Court; and may thereupon appoint a committee of such person's estate or person, or both, and may give such other orders in respect of the management of his estate or person as it deems fit; and such committee shall have the same duties, powers, and liabilities as if he were the committee of the estate or person of a protected person.

49. The Court may make such order as to the costs, charges, and expenses of and incidental to any proceeding authorised by this Act as the Court thinks proper, and every such order shall have the same effect as orders for the payment of money made by the Supreme Court in its equitable jurisdiction. Court may order costs. cf. Act No. 45, 1898, s. 113.

50. ~~(1)~~ There shall be an appeal to the Full Court of the Supreme Court from every order or decision made under this Act before or by a single judge in such manner as may be prescribed by rules of Court. Appeal. cf. *Ibid.* s. 114.

~~(2) Every person so appealing shall within fourteen days from the time of filing such appeal, either—~~

~~(a) deposit with the Master such sum, not exceeding one hundred pounds, as the Master directs; or~~

~~(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.~~

~~(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.~~

~~(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.~~

PART

PART XI.

MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS.

Division 1.—*General Powers and Duties of Master.*

Master in Protective Jurisdiction of Supreme Court.

51. There shall be a Master in the Protective Jurisdiction of the Supreme Court, who shall be the person for the time being holding the office of Master in Equity.

cf. Act No. 45, 1898, s. 115.

The Governor may appoint a Deputy Master. The Deputy Master may exercise all the powers conferred and shall perform all the duties imposed upon the Master by any Act or by any rule or order of the Court. During the illness or absence of the Deputy Master, the Court or the Chief Judge or a judge in Equity may authorise the Chief Clerk in the Protective Jurisdiction of the Supreme Court to exercise all the powers conferred and perform all the duties imposed upon the Master.

Administration of estates of certain persons.

cf. *Ibid.* s. 116.

52. (1) Subject to rules of Court, the jurisdiction and powers of the Court in respect of the administration and management of the estates of all protected persons and incapable persons may be exercised by the Master; and every order made by the Master under the authority hereby conferred on him shall take effect, unless rescinded or varied by the Court; and the Master shall have and execute all the powers and duties hereby or under the authority hereof vested in and imposed upon him; and subject to and in accordance with the regulations and the rules of Court and to any special order of the Court, the Master shall undertake the general care, protection, and management, or supervision of the management, of the estates of all patients, protected persons and incapable persons; and he shall supervise and enforce the performance of the obligations and duties of all committees under this Act, and shall take care of, collect and administer, under the provisions of this Act, the property and estates of all patients.

(2)

(2) The Master may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stockbroker or any other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate of any patient, protected person or incapable person.

(3) The Master shall not be responsible for the default of any such agent if employed in good faith.

Expenses incurred to be paid out of estate.

cf. Act No. 45, 1898, ss. 117, 118.

53. All expenses incurred by or on behalf of the Crown, in the care, protection, and management, or in the supervision of the management, under this Act, of the estate of any patient, protected person or incapable person, may be charged by the Master against and shall be paid out of and recoverable from such estate or may be paid by the Master out of any money of such patient, protected person or incapable person that comes to his hands, or may be recovered by him on summary application to the Court, whether or not such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Percentages.

cf. *Ibid.* s. 119.

54. There shall be paid to the Master a percentage at such rate not exceeding five pounds per centum per annum as may be fixed by rule of Court on the clear annual income of every patient, protected person and incapable person; and the said percentage shall be charged upon and payable out of the estate of such patient, protected person or incapable person whether or not, before payment, such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Master to have all necessary powers of inquiry, taking evidence, etc.

cf. *Ibid.* s. 120.

55. (1) The Master may in the execution or performance of his powers, authorities, duties and functions, and also in the prosecution of all inquiries and matters which may be referred to him under this Act, summon persons before him and administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit, and take recognizances and require the production of books, papers, accounts,

accounts, and documents; and every person so summoned shall be bound to attend as required by the summons and give evidence before the Master in like manner as persons summoned before him in his equity jurisdiction are bound to attend and to give evidence; and the Court may by any order (general or particular) refer to the Master any inquiries under the provisions of this Act relating to the person and estate of any person.

(2) Every person who does not appear pursuant to such summons (having had his reasonable expenses paid or tendered to him at the time of service of such summons), or does not assign some reasonable excuse for not so appearing, or appears and refuses to be sworn or examined shall, for every such neglect or refusal, be liable to a penalty not exceeding ten pounds.

Witnesses may be cross-examined orally.

cf. Act No. 45, 1898, s. 121.

56. Every person giving evidence by affidavit shall be liable to oral cross-examination by or before the Master upon his affidavit, and after cross-examination may be re-examined orally by or on behalf of the person filing the affidavit; and every person giving evidence by affidavit shall be bound to attend before the Master to be so cross-examined and re-examined upon receiving due and proper notice and payment or tender of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena ad testificandum before the Master; and the expenses attending on such cross-examination and re-examination shall be paid in such manner and by such person as the Master directs.

Master may issue advertisements.

cf. *Ibid.* s. 122.

57. The Master may cause to be issued such advertisements as may to him seem expedient with reference to the subject matter of a proposed inquiry or with a view to the efficient discharge of his duties as Master under this Act with regard to the estate and property of any person.

Master to approve of and to enforce security to be given by committee of estate.

cf. *Ibid.* s. 123.

58. The Master shall approve on behalf of Her Majesty of the security to be given by the committee of the estate of any person under order of the Court pursuant to this Act, and it shall be the duty of the Master to see that the conditions of all bonds and recognizances heretofore or hereafter to be given or entered into by the committee of the estate

estate or other persons in the matter of the estate shall be faithfully and regularly observed and performed, and immediately to report to a judge any breach or non-performance of any of such conditions; and thereupon such judge may cause such bond or recognizance to be forfeited or estreated, and such forfeiture or estreat shall be enforced and effected in the manner provided by any law now or hereafter to be in force relating to the estreat of recognizances entered into to Her Majesty.

Division 2.—Powers and Duties of Master in Respect to Estates of Patients.

Powers of Master in respect of estates of patients. cf. Act No. 45, 1898, s. 124.

59. The Master shall have in respect of the property and estate of any patient, in addition to the general powers conferred upon him in Division 1 of this Part of this Act, all the like powers and authorities, subject to the like limitations, as are hereinafter, in Division 3 of this Part of this Act, given to the committee of the estate of a person, and also the powers hereinafter mentioned.

Power to apply property of certain acquitted persons for their benefit. cf. *Ibid.* s. 125.

60. Where any person has on the trial of any information been acquitted as referred to in subsection two of section twenty-three of this Act or has upon arraignment upon a criminal charge been found to be mentally ill, the Sheriff shall report the fact to the Master, who shall thereupon make inquiry respecting the property of such person, and the Court may, on being satisfied that such person is still a mentally ill person and is still in confinement, make any orders with respect to the property of such person 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.

Master's powers as to property of patients. cf. *Ibid.* s. 126.

61. The Master shall have the management and care of the property of every patient, and in addition to other powers and duties necessary and incident to such management and care,

care, may exercise the following powers and perform the following duties with respect to the estate of every patient, that is to say, he may : —

(a) receive moneys, rents, incomes, and profits of real and personal property;

(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 one thousand 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, suits, and other proceedings on behalf of the patient;

(j) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

Master may apply to the Court as to the exercise of certain powers. cf. Act No. 45. 1898, s. 127.

62. (1) The Master may apply to the Court in such manner as may be prescribed by rules of Court, for directions with respect to the exercise of any of the powers over the estate of a patient which the Court may exercise, or order a committee to exercise, over the estate of any person, under Division 3 of this Part of this Act.

(2) The Court 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.

Master may execute instruments on behalf of patient. cf. *Ibid.* s. 128.

63. (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 not mentally ill, and may, in the name and on behalf of the patient, execute and sign deeds, instruments, transfers of shares, receipts, releases, and other documents, which shall be as effectual as if executed and signed by the patient himself while not mentally ill, 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 is a patient or not.

(2) 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 is 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.

Summary proceedings for protection of property of patients. cf. *Ibid.* s. 129.

64. (1) If any real or personal property of a patient is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient by any person, the Master may as such Master claim and recover possession of such property or damages for the conversion or injury thereof,

thereof, or payment of the said sum by summary proceeding on complaint before a judge who is hereby authorised and required on proof to his satisfaction of the said cause of complaint to make an order requiring the defendant to give up possession of such property, or to pay reasonable damages to be fixed by the said order for the conversion or injury thereof, or to pay the sum so due as aforesaid, and in default of compliance by the defendant with the said order, to order in and by the same or any subsequent order that the defendant be committed to prison for any period not exceeding six months.

(2) Such judge may in any complaint under this section make such order as to costs as he thinks fit, and every order under this section shall have the same effect, and may be enforced in like manner as any judgment, decree, or order of the Supreme Court in its jurisdiction at law or in equity.

Payments to consolidated revenue.

cf. Act No. 45, 1898, s. 130.

65. (1) 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 may from time to time appoint, all money paid to him for the maintenance of any patient, and all percentages.

(2) 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.

(3) A separate current 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.

cf. *Ibid.* s. 131.

66. The Master may apply moneys standing to the credit of the current account of a patient in 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)

(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 not a mentally ill person;

(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 taking up of the rights to issues of new shares to which a patient becomes entitled by virtue of his existing shareholdings;

(g) the investment, in manner hereinafter provided, of money not presently required for the above purposes;

(h) the payment to a patient or any person in accordance with the provisions of section seventy-one or seventy-three of this Act:

Provided that the Master may report to and apply for the advice and directions of the Court upon any of the matters aforesaid; and the Court 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 to be made, and notices given as may be deemed advisable, and may make such orders in the premises as may be thought proper.

67. The Master may, with the leave of the Court, to be obtained in such manner as is or may from time to time be prescribed by rules of Court, invest any money unapplied as aforesaid in the purchase of land, if such purchase appear to the Court to be desirable for the purpose of protecting the estate of the patient from injury or deterioration in value, of increasing the value or facilitating the sale of other lands of the estate, or of providing a home for the patient or his dependants; and the Court may, on the hearing of the application, deal with the same ex parte, or require notice to be served on any person.

Investment on purchase of land.

cf. Act No. 45, 1898, s. 133.

68.

Common fund.

cf. Act No. 19, 1913, s. 36A.

68. (1) Subject to this Act balances to the credit of all current accounts in the trust fund at the commencement of this Act and at any time thereafter shall be one common fund and shall be available for investment as provided in this Act.

(2) Interest received from investments from the common fund shall be credited to an account styled "Interest Account" and shall be allocated therefrom as provided in this section.

The costs and expenses of such allocation shall be a charge on the common fund.

(3) Interest shall be allowed on all balances forming part of the common fund, and shall be credited at such rate or rates and at such time or times as the Master may determine.

Investment of common fund and moneys unapplied under s. 66.

cf. *Ibid.* s. 36D.

69. Moneys unapplied as aforesaid and moneys in the common fund may be invested—

(a) in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts; or

(b) on deposit with the Colonial Treasurer for a period or periods not exceeding twelve months in any one case, which deposit shall bear interest at the prescribed rate and any such deposit may be renewed from time to time for a like period and subject to the like conditions.

Withdrawal from the common fund.

cf. *Ibid.* s. 36E.

70. (1) The Master may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund and standing to the credit of the current account of any patient for any purpose of or relating to the exercise and discharge by the Master of his powers, authorities, duties and functions in the care, protection and management of the estate of such patient.

(2) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund.

71.

Payment over of estate before discharge in certain cases. cf. Act No. 45, 1898, s. 134.

71. (1) If any patient is permitted to be absent from an admission centre, mental hospital or authorised hospital under the provisions of this Act, the Master may, in his discretion, pay over to the patient, or to any person on his behalf who gives 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 his current account 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.

(2) 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.

Sale, etc. by patient before his discharge may be set aside. cf. *Ibid.* s. 135.

72. 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 may, on application being made by the Master in such manner as is or may from time to time be prescribed by rules of Court, and on notice being given to such persons as the Court 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 a mentally ill person at the time when he made or executed the transfer, sale, alienation, charge, or lease.

Payments to discharged patients and to personal representatives of deceased patients. cf. *Ibid.* s. 136.

73. (1) 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 his current account 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, documents and chattels forming part of his estate.

(2) 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.

(3)

(3) The Master, in his discretion, may continue to have the care, protection and management of the estate of a discharged patient until the discharged patient obtains an order of the Court or the Master is satisfied that the discharged patient is capable of managing his own affairs.

(4) The Master, in his discretion, may after the death of a 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, documents 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 that probate of the will or letters of administration have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Unclaimed personal effects and moneys of patient.

74. (1) All personal effects in the hands of the Master belonging to a patient, and not claimed within two years from the date of the death or 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.

cf. Act No. 45, 1898, s. 137.

(2) All moneys standing to the credit of a patient in his current account in the trust fund at the end of six years from the date of the death or discharge of that patient shall be carried to and form part of the consolidated revenue.

(3) Nothing herein contained shall affect the right of a person under disability by reason of his being an infant, a mentally ill person or absent 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.

75. (1) 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.

(2) cf. *Ibid.* s. 138.

(2) On the discharge or death of a patient, he or his legal personal representative (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 not a mentally ill person.

Relatives, etc., may agree for maintenance of patient.

cf. Act No. 45, 1898, s. 139.

76. The Master may agree with any relative, guardian, or friend of any patient detained in an admission centre, mental hospital or authorised hospital for his maintenance while detained therein, and such relative, guardian, or friend shall be entitled to be reimbursed all necessary sums expended in such maintenance and interest thereon out of any real or personal property of such patient.

Owner, etc., of ship or aircraft liable for maintenance of certain mentally ill persons.

cf. *Ibid.* s. 140.

77. (1) If within sixty days after the arrival of any ship or aircraft in New South Wales the Master has reasonable cause to believe that a passenger or member of the crew arriving by that ship or aircraft is a mentally ill person and has become, or is likely to become, a charge upon the public as a patient in an admission centre or mental hospital, it shall be lawful for the Master thereupon to require the owner, charterer, agent, or master of that ship or aircraft to execute, with two sufficient sureties, jointly and severally, a bond to Her Majesty in such sum as the Master may determine, not exceeding three thousand pounds, conditioned to pay to the Master the maintenance of that passenger or member of the crew in such admission centre or mental 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 of the ship or aircraft, subject to the approval of the Master, to return such passenger or member of the crew to the place whence he was transported.

(2) 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.

(3) No bond shall be required when the passenger or member of the crew is, at the date of the arrival of the ship or aircraft, domiciled in New South Wales; but the onus of proving such domicile as aforesaid shall be upon the said owner, charterer, agent, or master of the ship or aircraft.

Neglect or refusal to execute bond.

78. If the said owner, charterer, agent, or master of the ship or aircraft 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 three thousand pounds, to be recovered summarily before a stipendiary magistrate.

cf. Act No. 45, 1898, s. 141.

Cost of maintenance of patient may be recovered.

79. The cost to the Crown of the maintenance of a patient shall constitute a debt due to the Crown and shall be recoverable accordingly from the patient or his estate:

Provided that if the Master considers that undue hardship would be occasioned by the enforcement of such debt or other circumstances so warrant he may in his discretion either forego the debt altogether or accept a smaller sum in satisfaction thereof.

Court may direct Master to report as to mental health of any patient.

80. The Court may direct the Master to personally examine any patient, and take evidence and call for information as to the mental health of such patient, and report thereon to the Court, and the Court may make orders for and with respect to—

cf. *Ibid.* s. 148.

(a) the appointment of a guardian or otherwise for the protection, care, and management of the person or of the estate, or of the person and estate, of any patient who by any such report is found to be a mentally ill person; such guardian, according to the nature of his appointment, to have the same powers and authorities, and be subject to the same control and liabilities, as a committee of the person and estate of a protected person appointed under this Act;

(b) the appointment of a receiver or otherwise for the protection, care and management of the estate of such patient; such receiver to have the same powers and

and authorities and be subject to the same control and liabilities as a receiver of the estate of a protected person appointed under this Act;

(c) the application of the income of such patient or a sufficient part thereof for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such patient, and of or in connection with the said examination by the Master and the obtaining of such orders by the Court;

(d) the investment or other application for the purpose of accumulation or otherwise of the surplus (if any) of such income as lastmentioned for the use of such patient, his wife, or children as to the Court may seem fit.

Division 3.—*Management of Estates of Certain Persons not being Patients.*

Power to raise money for certain purposes.

cf. Act No. 45, 1898, s. 149.

81. (1) The Court may order that any property of a protected person be sold, charged, mortgaged, dealt with, or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to all or any of the purposes following:—

(a) payment of such protected person's debts or engagements;

(b) discharge of any incumbrance on his property;

(c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit;

(d) payment of or provision for the expenses of his future maintenance;

(e) payment of the costs of any proceeding under this Act, or of any sale or other disposition made under this Act.

(2) In case of a charge or mortgage being made under this Act for the expenses of future maintenance the Court may direct the same to be payable, either contingently, if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as the Court thinks expedient.

Powers exercisable by committee under order of Court.

cf. Act No. 45, 1898, s. 150.

82. The Court may by order authorise and direct the committee of the estate of a protected person to do all or any of the following things :—

(a) sell any property belonging to such protected person;

(b) make exchange or partition of any property belonging to such protected person, or in which he is interested, and give or receive any money for equality of exchange or partition;

(c) carry on any trade or business of such protected person;

(d) grant leases of any property of such protected person for building, agricultural or other purposes;

(e) surrender any lease and accept a new lease;

(f) accept a surrender of any lease and grant a new lease;

(g) execute any power of leasing vested in such protected person having a limited estate only on the property over which the power extends;

(h) perform any contract relating to the property of such protected person entered into by him before he became a protected person;

(i) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to such protected person;

(j)

(j) exercise any power or give any consent required for the exercise of any power where the power is vested in such protected person for his own benefit, or the power of consent is in the nature of a beneficial interest in such protected person;

(k) sequestrate the estate of such protected person under the provisions of the bankruptcy laws;

(l) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts;

(m) bring and defend actions, suits, and other proceedings on behalf of such protected person.

Property exchanged and renewed lease to be to same uses as before. cf. Act No. 45, 1898, s. 151.

83. Any property taken in exchange and any renewed lease accepted pursuant to this Act on behalf of a protected person under the powers of this Act, shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

Extent of leasing power. cf. *Ibid.* s. 152.

84. (1) The power to authorise leases of a protected person's property under this Act shall extend to property of which the protected person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the protected person, and all persons entitled in remainder and reversion expectant upon the estate tail of the protected person including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the protected person shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the protected person or his committee would have had.

(2) Leases authorised to be granted and accepted by or on behalf of a protected person under this Act may be for such number of lives or such term of years at such rent and subject to such reservations, covenants, and conditions as the Court may order.

(3)

(3) Fines or other payments on the renewal of leases may be paid out of the estate of the protected person, or charged with interest on the leasehold property, as the Court may order.

85. (1) Any patient, protected person or incapable person, his heirs, next of kin, devisees, legatees, executors, administrators, and assigns shall have the same interest in any moneys or other property arising from any sale, mortgage, charge, disposition of any property or other dealing therewith under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made, and the surplus moneys or other property shall be of the same nature as the property sold, mortgaged, charged, disposed of or dealt with.

Interest in property of certain persons not to be altered.

cf. Act No. 45, 1898, s. 153.

(2) Moneys received for equality of partition and exchange, and all fines, premiums, and sums of money received upon the grant or renewal of a lease where the property, the subject of the partition, exchange, or lease was real estate of the patient, protected person or incapable person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate, except in the case of fines, premiums and sums of money received upon the grant or renewal of leases of which the patient, protected person or incapable person was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the patient, protected person or incapable person.

(3) In order to give effect to the foregoing provisions of this Act the Court may make such orders and direct such conveyances, deeds, and things to be executed and done as it thinks fit.

Expenses of improvements may be charged on estate. cf. Act No. 45, 1898, s. 154.

86. (1) The Court may order that the whole or any part of any moneys expended or to be expended under its order for the permanent improvement, security, or advantage of the property of a protected person or of any part thereof, shall with interest be a charge upon the improved property or any other property of the protected person, but so that no right of sale or foreclosure during the lifetime of the protected person shall be conferred by the charge, and the interest shall be kept down during his lifetime out of the income of his general estate as far as the same is sufficient to bear it.

(2) The charge may be made either to some person advancing the money, or, if the money is paid out of the protected person's general estate to some person as a trustee for him as part of his personal estate.

Court may order certain estates to be applied for maintenance. cf. *Ibid.* s. 155.

87. Where the net amount or net estimated value of the property of any protected person does not exceed the sum of five hundred pounds, the Court may order the amount of the property or the produce thereof when realised to be paid or transferred to some fit person, to be applied in or towards the maintenance of the protected person, either at the discretion of such fit person, or in such manner, and subject to such control as the Court may direct, and for the purpose of giving effect to any such order the Court may order any real estate or other property whatsoever of the protected person to be sold, and a valid conveyance or transfer thereof to be executed or made by such fit person as it shall direct.

Application of income for temporary maintenance. cf. *Ibid.* s. 156.

88. (1) Where it appears to the Court that there is reason to believe that the mental illness of any protected person is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of such protected person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income, or of ready money belonging to the protected person, and standing to his account with a banker

banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as it may think proper for the temporary maintenance of the protected person and the members of his immediate family who are dependent upon him for maintenance, and may order the payment of any such sum of money as aforesaid, or any part thereof, to some fit person, and may direct the same to be paid to such fit person accordingly, and when received to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid.

(2) The receipt in writing of the person named in the order to whom payment is to be made for any moneys payable to him by virtue thereof shall effectually discharge the banker, agent, or other person paying the same from the moneys therein respectively expressed to be received.

(3) The person so receiving any moneys by virtue of this section shall pass an account thereof before the Master when required.

89. Where a person, being a member of a partnership, becomes a protected person the Court may, by order, dissolve the partnership.

Court may dissolve partnership.

cf. Act No. 45, 1898, s. 157

90. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of a protected person, execute, make, and do all such conveyances, deeds, transfers, and things for giving effect to any order under this Act as the Court directs; and every such conveyance, deed, transfer, and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

Power to carry orders into effect.

cf. *Ibid.* s. 158.

91.

Committee may act as trustee or guardian in certain cases. cf. Act No. 45, 1898, s. 159.

91. Where a power is vested in a protected person in the character of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the committee of the estate, in the name and on behalf of the protected person, under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

Appointment of new trustees by committee. cf. *Ibid.* s. 160.

92. Where under this Act the committee of the estate, under order of the Court, exercises in the name and on behalf of a protected person a power of appointing new trustees vested in him the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same rights and powers as they would have had if the order had also been made by the Supreme Court under any law for the time being in force relating to trusts; and the Court may in such case where it seems to be expedient make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of any such law as aforesaid on the appointment thereunder of new trustees.

Temporary provision for maintenance. cf. *Ibid.* s. 161.

93. In any case where, pending the appointment of a committee, it appears to the Master desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the protected person or any member of his family out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Master may, by certificate, authorise such banker or other person to pay to the person to be named in such certificate such sum as he certifies to be proper; and may, by such certificate, give any directions as to the proper application thereof for the protected person's benefit by that person, who shall be accountable for the same, as the Master directs.

94.

Transfer of stock belonging to certain persons.

cf. Act No. 45, 1898, s. 162.

94. Where any stock is standing in the name of or is vested in a protected person beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a protected person in trust for the protected person or as part of his property, and the committee dies intestate or himself becomes a mentally ill person or is out of the jurisdiction, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new committee or as he directs for the space of fourteen days after a request in writing for that purpose made by a new committee, then the Court may order some fit person to transfer the stock to or into the name of a new committee or otherwise, and also to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court directs.

Stock in name of mentally ill persons residing out of State may be ordered to be transferred.

cf. *Ibid.* s. 163.

95. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction that a declaration to the effect that such person is a mentally ill person, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock to or into the name of the curator or other person appointed as aforesaid or otherwise, and also to receive and pay over the dividends thereof as the Court thinks fit.

Who shall be appointed to make transfer.

cf. *Ibid.* s. 164.

96. Where an order is made under this Act for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the company, society or association in whose books the transfer is to be made.

Costs and remuneration may be paid out of estate.

cf. *Ibid.* s. 165.

97. The Court may order the costs and expenses of and relating to the petitions, applications, orders, directions, conveyances, and transfers to be presented or made in pursuance of this Part of this Act to be paid and raised out of or from the property, or the rents, income, or profits in respect of which the same respectively shall be presented or made in such manner as it may think proper; and the Court may order such sum by way of remuneration to be paid out of the estate to the committee of any protected person as the Court may think fit.

98.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

98. Every conveyance, lease, surrender, transfer, charge, or other disposition made or accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons whomsoever; and this Act shall be a full indemnity and discharge to all persons for all acts and things done or permitted to be done in pursuance thereof, or of any order of the Court made or purporting to be made under this Act.

cf. Act No. 45, 1898, s. 166.

Act not to subject property of protected persons to debts.

99. Nothing in this Act contained shall subject any part of the property of a protected person to the debts or demands of his creditors, further or otherwise than as the same was immediately before the commencement of this Act subject thereto by due course of law.

cf. *Ibid.* s. 167.

PART XII.

SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES.

Interpretation and application of Part.

100. (1) In this Part of this Act—

"Reciprocating state" means any part of Her Majesty's dominions outside New South Wales which has been declared under subsection two of this section to be a reciprocating state for the purposes of this Part of this Act.

cf. *Ibid.* s. 167A.

(2) Where the Governor is satisfied that the laws in force in any part of Her Majesty's dominions outside New South Wales are such as to enable powers to be exercised in that part in cases of patients residing in New South Wales substantially similar to the powers conferred by this Part of this Act in cases of mentally ill patients residing in that part, the

the Governor may by proclamation published in the Gazette declare that part to be a reciprocating state for the purposes of this Part of this Act, and thereupon that part shall become a reciprocating state within the meaning of this Part of this Act.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

(4) References in the foregoing provisions of this section to Her Majesty's dominions outside New South Wales shall be construed as including references to any territory which is under Her Majesty's protection and to any territory the subject of a trusteeship agreement approved by the General Assembly of the United Nations which is under the administration of a government of any part of Her Majesty's dominions.

Powers of Master as to property in New South Wales of mentally ill patients in reciprocating state.

cf. Act No. 45, 1898, s. 167B.

101. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property and estates of mentally ill patients in any hospital or other institution situated in that state and authorised for the reception and care of mentally ill persons—

(a) certifies in writing under his hand and seal to the Master that any person is a mentally ill patient residing in that state and is confined in any such hospital or other institution and that he is possessed of or entitled to or appears to be entitled to or interested in real or personal property in New South Wales; and

(b) by instrument in writing under his hand and seal authorises the Master to collect, recover, manage, sell or otherwise dispose of and administer such property or to make inquiry respecting such property,

the Master shall have and may exercise over and in respect of such property the same powers of collection, recovery, management, sale, disposition, administration, and inquiry as he

he would have had and may have exercised over such property if such mentally ill patient had been resident in New South Wales and a patient within the meaning of this Act; and the provisions of this Act apply in respect of such property accordingly.

(2) Where the Master has, pursuant to any such authority as is referred to in paragraph (b) of subsection one of this section and in the exercise of the powers conferred upon him by that subsection, received any moneys or properties, the Master may, after—

(a) payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and

(b) satisfying or providing for the following debts and claims of which he has notice, namely, debts of the mentally ill patient named in such authority owing to persons resident in New South Wales and the claims of persons so resident against that patient,

pay over or deliver the balance of such moneys or properties to the officer of the reciprocating state who signed such authority or his successor in office, without seeing to the application thereof, and without incurring any liability in respect of such payment over or delivery, and shall duly account to that officer or his successor for that balance.

PART XIII.

COURT VISITORS.

102. The Court may by general rule or special order :— Court may order protected or incapable persons to be visited.

(a) direct the Director or other fit person to visit any protected person or incapable person and to make a report in writing to the Court or a judge of the state

cf. Act No. 45, 1898, s. 168.

state of mind and bodily health and general condition, and also of the care and treatment of the person visited;

(b) 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 assets of the person visited, and as to the orders of the Court made in respect thereof;

(c) order that any fees and expenses connected with the visit be paid out of the estate of the person visited.

PART XIV.

MISCELLANEOUS PROVISIONS.

Offences in relation to certificates by medical practitioners.

103. A medical practitioner who signs any certificate in or to the effect of the form set out in Part I of Schedule Two or in Schedule Three without having personally examined the person to whom it relates, at the time specified in such certificate, for the purpose of ascertaining the condition of such person or who wilfully makes any false statement in any such certificate shall be guilty of an offence against this Act.

Medical certificates, requests, etc., may be amended.

104. (1) Any medical certificate, request, recommendation, direction, order, or other document, by virtue of which any person has been admitted to an admission centre, mental hospital or authorised hospital, and which is incorrect or defective in any particular, may, with the approval of the Director, and within twenty-eight days after the admission of such person, be amended by the person who has signed the same; and such medical certificate, request, recommendation, direction, order, or other document as so amended shall thereupon be deemed to have and always to have had effect from its original date.

(2)

(2) If such medical certificate, request, recommendation, direction, order, or other document is not so amended, the Director may order the discharge of the person so admitted as aforesaid; or direct the superintendent of such admission centre, mental hospital or authorised hospital to obtain a new medical certificate, request, recommendation, direction, order or other document which shall have and be deemed always to have had effect for all purposes as if it had been obtained, made, and signed on the date on which the medical certificate, request, recommendation, direction, order or other document upon which such person was admitted to such admission centre, mental hospital or authorised hospital was obtained, made and signed.

Patients absent without leave.

105. Where a patient absents himself from any admission centre, mental hospital or authorised hospital otherwise than in accordance with the provisions of this Act the superintendent or any officer, servant or other person employed in such admission centre, mental hospital or authorised hospital, member of the police force or any other person authorised by the Director or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised may escort such patient and return him to such admission centre, mental hospital or authorised hospital.

Penalty on superintendents, officers, etc., ill-treating patients.

106. Any superintendent, officer, servant or other person employed in an admission centre, mental hospital or authorised hospital who strikes, wounds, ill-treats, or wilfully neglects any patient or voluntary patient shall for every such offence, be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any period not exceeding six months, or to both such penalty and imprisonment:

Provided that nothing in this section contained shall prejudice or affect any civil responsibility of the offender arising out of such offence.

107. The powers, authorities, duties and functions conferred or imposed upon a superintendent of or an official visitor to an admission centre, mental hospital or authorised hospital by or under this Act shall be exercised and performed by him only in respect of that admission centre, mental hospital or authorised hospital and the patients and voluntary patients therein.

Powers of superintendents and official visitors exercisable in respect of places to which they are appointed.

108. (1) (a) This section shall apply to leucotomy and such other operations or medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

Conditions applicable to performance or giving of certain operations or medical treatment upon or to patients. cf. Act No 45, 1898, s. 179A.

(2) No patient shall be subjected to any operation or medical or therapeutic treatment to which this section applies—

(a) by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless the Director has consented to the performance of such operation or the application of such treatment; or

(b) by any other medical practitioner or practitioners unless the Director has consented to the performance of such operation or the application of such treatment by such practitioner or practitioners.

(3)

(3) The Director shall not give such consent unless—

(a) he is satisfied upon the report of a superintendent that such operation or treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated, or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient; and

(b) in the case of leucotomy and any other operation or medical or therapeutic treatment in respect of which a Consultative Committee has been constituted as hereinafter provided the appropriate Consultative Committee has recommended the subjection of the patient to such operation or medical or therapeutic treatment.

(4) No patient shall be subjected to any operation or medical or therapeutic treatment referred to in paragraph (b) of subsection three of this section if the person, on whom notice has been served by the Director as hereinafter provided, has within the time prescribed expressed his disapproval of such operation or medical or therapeutic treatment.

Such notice shall state the name of the patient proposed to be subjected to any such operation or medical or therapeutic treatment, the nature of such operation or treatment, and the time within which disapproval may be expressed.

Such notice shall—

(a) where the patient is married and not separated by order of a court or by agreement from his spouse, be served on the spouse;

(b) where the patient is not married or is separated by order of a court or by agreement, be served on the parents or the surviving parent of such patient;

(c) where there is no person on whom notice is required to be served under the foregoing provisions of paragraphs (a) and (b) of this subsection, or the Director is unable to ascertain particulars of the name

name and whereabouts of any person on whom notice is required to be so served, be served on such person as the Director considers to be the person in whose care, guardianship or custody the patient was prior to his admission to the admission centre, mental hospital or authorised hospital.

Where the Director has reason to believe that any disapproval expressed by any person in accordance with the foregoing provisions of this subsection has been unjustifiably or unreasonably expressed he may refer the matter to the Master for inquiry and determination. Any person who appears to the Master to be interested in the matter may be heard in person or by counsel at any such inquiry.

If the Master is of opinion that such disapproval has been expressed unjustifiably or unreasonably he may order that the patient be subjected to any such operation or medical or therapeutic treatment.

There shall be an appeal to the Full Court of the Supreme Court from any such order in such manner as may be prescribed by rules of Court.

(5) (a) There shall be constituted a Consultative Committee for the purposes of making recommendations to the Director relating to the subjection of patients to the operation of leucotomy.

(b) The Minister may in respect of any other operation or medical or therapeutic treatment to which the provisions of this section apply constitute a Consultative Committee for the purpose of making recommendations to the Director relating to the subjection of patients to such operation or medical or therapeutic treatment.

(c) Any Consultative Committee constituted pursuant to the provisions of this subsection shall consist of such medical practitioners and other persons as the Minister appoints.

(6)

(6) Where in the opinion of a superintendent the delay incurred in obtaining the consent of the Director to the performance or application of any operation or medical or therapeutic treatment to which this section applies would endanger the life of any patient such superintendent may—

(a) himself perform such operation or apply such treatment; or

(b) by writing under his hand consent to the performance of such operation upon or the application of such treatment to such patient by any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or by any other medical practitioner or practitioners named in such consent.

Where a superintendent performs any operation or applies any treatment or consents to such performance or application in accordance with the provisions of this subsection he shall forthwith report in writing to the Director the circumstances of the case.

(7) Any consent given by the Director or of a superintendent under this section shall, for the protection of any medical practitioner performing any operation or applying any treatment in accordance with such consent and of any person concerned with the performance of such operation or with the application of such treatment, have the same effect as if such consent had been given by the person operated upon or treated while he was not a mentally ill person or in the case of a minor, as if such consent had been given by his parents.

Certain operations or treatments may be performed or applied without consent of patients.

109. (1) (a) This section shall apply to electro convulsive therapy, electro narcosis therapy and insulin shock and such operations and medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b)

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2) A patient may be subjected to any operation or medical or therapeutic treatment to which this section applies by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or any other medical practitioner or practitioners notwithstanding that the patient or any other person legally entitled to consent to the operation or medical or therapeutic treatment of the patient has not consented thereto.

(3) No operation or medical or therapeutic treatment to which this section applies shall be performed on or applied to a patient unless the superintendent has determined that such operation or medical or therapeutic treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient.

Any such determination shall be expressed in writing.

110. (1) (a) Any proclamation under section one hundred and eight or one hundred and nine of this Act or subsection two of this section shall— Ancillary provisions to ss. 108 and 109.

(i) be published in the Gazette;

(ii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;

(iii)

(iii) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) The day so appointed shall not be earlier than the day next following—

(i) the fifteenth sitting day after such proclamation has been laid before both Houses of Parliament if notice of motion for the disallowance of such proclamation is not given in either House of Parliament within fifteen sitting days after such proclamation has been laid before such House; or

(ii) the day upon which a notice of motion for the disallowance of such proclamation duly given in either House of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days.

(c) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation such proclamation shall not take effect.

(2) Any proclamation under section one hundred and eight or one hundred and nine of this Act may be revoked by the Governor by proclamation.

(3) No action claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against Her Majesty, the Director or a superintendent or any member of a medical staff or medical practitioner referred to in sections one hundred and eight and one hundred and nine of this Act for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the enactment of those sections or the giving of any consent by the Director or a superintendent or as a result of any operation or treatment performed or applied in accordance with the provisions of those sections.

(4) In sections one hundred and eight and one hundred and nine of this Act "superintendent" in relation to an authorised hospital the holder of the license for which is not a medical practitioner means any medical practitioner visiting such authorised hospital pursuant to the provisions of section eleven of this Act.

Penalties.

111. (1) Any person guilty of an offence against this Act shall, except where otherwise expressly provided, be liable to a penalty not exceeding one hundred pounds.

(2) Any such penalty may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Regulations.

112. (1) The Governor may make regulations, not inconsistent with this Act, for and with respect to : —

(a) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act;

(b) prescribing the keeping and form of such books, records, registers or other documents or the furnishing of such reports or statistics as may be necessary or convenient for the administration of this Act;

(c) prescribing the duties, responsibilities, obligations and liabilities of superintendents and medical officers;

(d) all matters relating to correspondence by and with patients including the authorisation of the perusal and withholding of such correspondence;

(e) the general administration of admission centres and mental hospitals;

(f) all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

(2) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULES.

SCHEDULE ONE.

No. of Act.	Name of Act.	Extent of Repeal.
1898, No. 45	Lunacy Act of 1898	The whole.
1924, No. 10	Crimes (Amendment) Act, 1924	Section twenty-nine.
1934, No. 39	Lunacy (Amendment) Act, 1934	The whole.
1937, No. 37	Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937.	Section four.
1944, No. 19	Public Service (Amendment) Act, 1944.	Section three.
1944, No. 38	Lunacy (Amendment) Act, 1944	The whole.
1945, No. 33	Lunacy (Amendment) Act, 1945	The whole.
1946, No. 38	Lunacy (Amendment) Act, 1946	The whole.
1947, No. 41	Jury (Amendment) Act, 1947 ...	Subsection three of section eight.
1949, No. 43	Mental Institution Benefits Agreement Act, 1949.	Section three.
1952, No. 31	Lunacy (Amendment) Act, 1952 ...	The whole.
1955, No. 3	Lunacy (Amendment) Act, 1955 ...	The whole.

SCHEDULE TWO.

MENTAL HEALTH ACT, 1958.

MEDICAL CERTIFICATE.

Part I.

I, ..., of
(*name in full*)
..... (Medical Practitioner)
(*address*)
do hereby certify that on the ..... day of .....
19 , at .....
(*state place where examination took place*)
I personally examined .....
(*name of person in full*)
and I am of the opinion that the said person is a mentally ill person and is a suitable case for admission to the Admission Centre at ..... for observation and treatment.
(*name of Institution*)

* In my opinion the said person is:— * Strike out and initial any of the conditions that are not applicable.

(a) suicidal
(b) dangerous to others
(c) unable to care for himself
(d) not under proper care and control.

The following treatment and medication (*if any*) has been administered in respect of the mental illness of the said ....., viz.

So far as I am aware—

(a) the bodily health and condition of the said .... is ..... and

(b) the said ..... * has / has not suffered any recent injury. * Strike out words inapplicable.

If the said ..... has suffered recent injury the particulars of such injury are as follows:—

Made and signed this ..... day of ....., 19 .

Signature .....

Part II.

If the assistance of a member of the Police Force is required this Part of the Schedule should be completed.

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the said ..... to the Admission Centre at .....

Made and signed this ..... day of ..... 19 .

Signature .....

SCHEDULE

SCHEDULE THREE.

MENTAL HEALTH ACT, 1958.

I, the undersigned, being a medical practitioner, hereby certify that I, on the ..... day of ....., 19 , at *..... ..... separately from any other medical practitioner, personally examined .... of †....., whose occupation is ..... and that the said ..... is mentally ill and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:—

(1) Facts indicating mental illness observed by myself.

(2) Other facts (if any) indicating mental illness communicated to me by ‡

Dated at ..... this ..... day of ....., 19 .

Signature .....

Place of abode .....

* Insert name and address of place of examination.

† Insert residence.

‡ State full names and addresses of every communicant.

SCHEDULE FOUR.

MENTAL HEALTH ACT, 1958.

WHEREAS it has been duly certified under section ..... of the Mental Health Act, 1958, that ..... a prisoner in the ..... is mentally ill, I, the Minister for Health, exercising the powers conferred upon me under the said Act, hereby order that the said ..... be removed to the Mental Hospital at ..... to remain there until he is certified to be not mentally ill and dealt with in accordance with the said section.

Given under my hand the ..... day of ..... 19 .

.....

Minister for Health.

Sydney: V. C. N. Blight, Government Printer—1958

This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

ALLAN PICKERING,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 3 *December,* 1958.

New South Wales

ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. , 1958.

An Act to make provision with respect to the care, treatment and control of persons who are mentally ill and the management of their estates; to repeal the Lunacy Act of 1898 and certain other Acts; and for purposes connected therewith.

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 :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Mental Health Act, 1958". Short title and commencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows : —

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–8.

PART III.—ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 9–11.

PART IV.—ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 12–15.

PART V.—DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION—*ss.* 16–20.

PART VI.—VOLUNTARY PATIENTS—*ss.* 21–22.

PART VII.—MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES—*ss.* 23–33.

PART VIII.—WELFARE OFFICERS—*s.* 34.

PART IX.—OFFICIAL VISITORS—*ss.* 35–36.

PART X.—PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES—*ss.* 37–50.

PART XI.—MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS—*ss.* 51–99.

Division 1.—*General Powers and Duties of Master*—*ss.* 51–58.

Division 2.—*Powers and Duties of Master in Respect to Estates of Patients*—*ss.* 59–80.

Division 3.—*Management of Estates of Certain Persons not being Patients*—*ss.* 81–99.

PART XII.—SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES—*ss.* 100–101.

PART

PART XIII.—COURT VISITORS—*s.* 102.

PART XIV.—MISCELLANEOUS PROVISIONS—*ss.* 103–112.

SCHEDULES.

3. (1) The several Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) (a) The persons who immediately before the commencement of this Act held office as the Inspector-General of the Insane, Deputy Inspector-General and Deputy Master in Lunacy shall be deemed as from such commencement to have been appointed by the Governor as the Director, Deputy Director and Deputy Master in the Protective Jurisdiction of the Supreme Court, respectively.

(b) All persons who immediately before the commencement of this Act held office as superintendents, deputy superintendents, medical officers or otherwise under the Acts hereby repealed shall continue to hold office as such as from such commencement.

(c) All persons who immediately before the commencement of this Act held office as official visitors under the Acts hereby repealed shall be deemed to have been appointed as such under this Act:

Provided that any such official visitor who has at such commencement attained the age of seventy years shall upon such commencement be deemed to have vacated his office as such.

(d) All reception-houses appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be admission centres.

(e) All hospitals for the insane or for the criminal insane appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be mental hospitals.

(f)

(f) Any house for the reception of insane patients in respect of which a license granted under the Acts hereby repealed is in force at the commencement of this Act shall be deemed to be licensed as an authorised hospital until such license would have expired but for the provisions of this Act or is sooner revoked in like manner as a license for an authorised hospital may be revoked.

(g) All persons who immediately before the commencement of this Act were incapable persons, insane patients or patients, and insane persons within the meaning of the Acts hereby repealed shall respectively be deemed to be incapable persons, patients and protected persons within the meaning of this Act.

(h) The care, protection, administration and management of the estate of any person which immediately before the commencement of this Act was exercised by a committee of the estate of such person, a person appointed to undertake the care and management of such estate or the Master in Lunacy may continue to be exercised by such committee, person so appointed or the Master under and subject to the provisions of this Act.

(i) All rules of Court, regulations and proclamations made or deemed to have been made under the Acts hereby repealed and in force at the commencement of this Act shall, until varied or rescinded under this Act, continue in force and shall be deemed to have been made under this Act.

(j) All proceedings initiated, pending or part heard under the Acts hereby repealed at the commencement of this Act shall be continued as if such proceedings had been taken or initiated under this Act.

4. In this Act, unless the context or subject matter otherwise indicates or requires: — Interpretation.

"Admission centre" means a place appointed to be an admission centre under this Act.

"Authorised

"Authorised hospital" means a hospital in respect of which a license granted to any person under Part III of this Act is for the time being in force.

"Committee" means committee appointed under this Act.

"Continued treatment patient" means a patient in respect of whom an order has been made under section fourteen of this Act that he be reclassified as a continued treatment patient and be detained in an admission centre, mental hospital or authorised hospital.

"Court" means the Supreme Court in its Protective Jurisdiction.

"Director" means Director of State Psychiatric Services appointed under this Act.

"Incapable person" means any person who is proved to the satisfaction of the Court under section thirty-nine of this Act to be through mental infirmity, arising from disease or age, incapable of managing his affairs.

"Judge" means judge of the Court.

"Justice" means justice of the peace.

"Manager" means the person appointed under section thirty-nine of this Act to undertake the care and management of the property of an incapable person.

"Master" means Master in the Protective Jurisdiction of the Supreme Court.

"Mental hospital" means a place appointed to be a mental hospital under this Act.

"Mentally ill person" means a person who owing to mental illness requires care, treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs and "mentally ill' has a corresponding meaning.

"Patient"

"Patient" means any person admitted to and detained in any admission centre, mental hospital, or authorised hospital in accordance with the provisions of this Act and includes any person so admitted and detained while absent from such admission centre, mental hospital or authorised hospital either with or without leave of absence, but does not include a voluntary patient or, in Part V of this Act, except as provided in subsection three of section nineteen of this Act, a person detained in a mental hospital pursuant to Part VII of this Act.

"Prescribed" means prescribed by this Act or the regulations.

"Prison" means prison within the meaning of the Prisons Act, 1952.

"Protected person" means a person in respect of whom a declaration under section thirty-eight of this Act is in force.

"Regulations" means regulations made under this Act.

"Schedule" means Schedule to this Act.

"Stock" means any share or other interest in any company, society or association, and any fund, annuity or security transferable in books kept by any company, society or association, or transferable by deed alone, or by deed accompanied by other formalities, and any money payable for the discharge or redemption thereof, and any share or interest therein.

"Superintendent" means superintendent of any admission centre, mental hospital or authorised hospital.

"Tribunal" means a Mental Health Tribunal constituted under section thirteen of this Act.

"Voluntary patient" means any person who has been admitted to an admission centre, mental hospital or authorised hospital under section twenty-one of this Act.

"Welfare officer" means a person appointed as a welfare officer under section thirty-four of this Act.

References to certain words and expressions —how to be construed.

5. As from the commencement of this Act, in the construction, and for the purposes, of any Act, by-law, regulation, ordinance or any other instrument of the same or a different kind or nature, any reference to, or to be read, deemed and taken to refer to—

(a) any word or expression, within the meaning of the Acts hereby repealed, specified in the first column of the Schedule hereunder or to any like word or expression shall be read, deemed and taken to refer to the word or expression appropriate thereto specified in the second column of such Schedule unless the context or subject matter otherwise indicates or requires.

THE SCHEDULE.

First Column.	Second Column.
Insane, lunatic, insane patient, patient, incapable person, insane person, committee of the estate of an insane person, manager of the estate of an incapable person, Master in Lunacy, Lunacy Act of 1898, Inspector-General of the Insane, Deputy Inspector-General, Chief Clerk in Lunacy, Supreme Court in its Lunacy Jurisdiction, hospital for the insane, hospital for the criminal insane, reception house, licensed house.	Mentally ill, mentally ill person, patient, incapable person, protected person, committee of the estate of a protected person, manager of the estate of an incapable person, Master in the Protective Jurisdiction of the Supreme Court, Mental Health Act, 1958, Director, Deputy Director, Chief Clerk in the Protective Jurisdiction of the Supreme Court, Supreme Court in its Protective Jurisdiction, mental hospital, admission centre, authorised hospital.

(b) any of the provisions of the Acts hereby repealed shall be read, deemed and taken to refer to the corresponding provisions (if any) of this Act.

6.

6. There shall be a Protective Jurisdiction of the Supreme Court. Protective Jurisdiction of Supreme Court.

The jurisdiction which immediately before the commencement of this Act was exercisable by the Supreme Court in its Lunacy Jurisdiction shall be exercised by the Supreme Court in its Protective Jurisdiction.

PART II.

ADMINISTRATION.

7. (1) The Governor may appoint a Director of State Psychiatric Services and a Deputy Director of State Psychiatric Services, who shall have and may exercise and perform all the powers, authorities, duties and functions of the Director during his absence for any cause whatsoever. Director of State Psychiatric Services.

(2) The Director shall from time to time visit and inspect every admission centre, mental hospital and authorised hospital with or without previous notice and at any time of the day or night as he thinks fit.

The Director may at any time make such inspections, investigations, and inquiries as he deems necessary, and shall make such inspections, investigations and inquiries as are directed by the Minister, with respect to the care, treatment or control of patients and voluntary patients or with respect to the management of any admission centre, mental hospital or authorised hospital.

(3) (a) The Director visiting any admission centre, mental hospital or authorised hospital may, by notice in writing, require any person to furnish him with such information as he requires concerning any of the matters with respect to which the Director is by this Act authorised to make inspections, investigations or inquiries or to attend and give evidence before him concerning any such matters, and to produce all books, documents or other papers whatever in such person's custody or under his control relating thereto.

(b)

(b) The Director may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he may administer an oath.

(c) Any person who without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Director or to answer truly and fully any questions put to him, or to produce any book, document or papers required of him by the Director, shall be guilty of an offence against this Act.

(4) (a) Any Director or Deputy Director who has any pecuniary interest, directly or indirectly, in any authorised hospital shall be deemed guilty of misconduct within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

(b) A Director or Deputy Director shall not sign any certificate or recommendation for the admission of any patient into or for the further observation and treatment of any patient in any admission centre, mental hospital or authorised hospital.

(5) The Director shall furnish to the Minister an annual report in writing as to the state and condition of the several admission centres, mental hospitals and authorised hospitals and as to the care of the patients and voluntary patients therein, and as to such other particulars as he thinks fit, and a true copy of such report shall forthwith be laid before Parliament if then in session, or if not then in session, within twenty-one sitting days after the commencement of the next session of Parliament.

Medical superintendents.

8. The Governor may appoint a medical superintendent for each admission centre and mental hospital and if he thinks fit a deputy medical superintendent therefor. No person shall be so appointed unless he is a medical practitioner.

A deputy medical superintendent shall have and may exercise and perform all the powers, authorities, duties and functions of the superintendent during his absence for any cause whatsoever.

PART

PART III.

ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Admission centres.

9. The Governor may, by notification in the Gazette, appoint any place to be a place for the admission and temporary treatment of mentally ill persons and every such place shall be an admission centre for mentally ill persons. Any such appointment may be revoked in like manner.

Mental hospitals.

10. The Governor may, by notification in the Gazette, appoint any place to be a mental hospital and in and by such notification may assign a name to such hospital. Any such appointment may be revoked in like manner.

Authorised hospitals.

11. (1) The Minister on the recommendation of the Director may, subject to the provisions hereinafter contained, by writing under his hand in or to the effect of the prescribed form grant to any person or to two or more persons jointly, a license to keep a hospital for the admission and treatment of a number of patients and voluntary patients not exceeding the number specified in such license.

Any such license shall be in force for a period of twelve months but may be renewed from time to time for a further period of twelve months.

(2) Applications for a license under this section shall be made to the Minister, shall be in or to the effect of the prescribed form and shall be accompanied by a plan of the premises in respect of which the license is desired.

(3) The Minister may, for good cause, revoke any such license. One month's notice in writing of the proposed revocation shall be given by the Minister to the holder of such license.

(4) If after the expiration of two months from the termination of a license, whether by effluxion of time or revocation thereof, there is in any authorised hospital in respect of which such license has so terminated any patient or voluntary patient, every person keeping such hospital shall be guilty of an offence against this Act.

(5) No person (unless he is a person who derives no profit therefrom, or a committee, or manager, or otherwise authorised under this Act) shall receive to board or lodge in any house, or take the care or charge of, any patient or voluntary patient.

(6) The holder of a license under this section shall where the authorised hospital in respect of which he holds such license—

(a) has more than one hundred patients and voluntary patients have at all times a medical practitioner resident therein;

(b) has more than fifty but not more than one hundred patients and voluntary patients cause a medical practitioner to attend such authorised hospital daily;

(c) has fifty or less patients and voluntary patients cause a medical practitioner to attend such authorised hospital at least twice a week, or where such number of patients and voluntary patients is less than ten and the Minister authorises the holder of the license to cause a medical practitioner to attend such authorised hospital at specified intervals less frequently than twice a week cause a medical practitioner to attend accordingly.

The medical practitioner resident in an authorised hospital pursuant to paragraph (a) of this subsection shall be the superintendent of such hospital. Where there is no medical practitioner resident in any authorised hospital the holder of the license for such hospital shall be the superintendent of such hospital.

(7) The superintendent of any authorised hospital shall cause to be kept such records and furnish to the Director such particulars as are prescribed in connection with the admission, treatment, discharge, removal, absence with or without leave or death of every patient and voluntary patient admitted to such authorised hospital.

(8)

(8) The holder of a license shall not make or cause to be made any additions or alterations to the authorised hospital for which he holds such license without the approval in writing of the Minister.

PART IV.

ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Procedure for admitting persons to admission centres.

12. (1) A person may be admitted to and detained in an admission centre—

(a) upon the certificate of a medical practitioner who is of the opinion that such person is a mentally ill person;

(b) upon a written request to be so admitted and detained made by him to the superintendent of such admission centre;

(c) upon a written request for him to be so admitted and detained made to the superintendent of such admission centre by a relative or friend of such person;

(d) where he is taken to such admission centre by a member of the police force and a copy of an order, relating to such person, made by a justice under subsection two or three of this section is handed to the superintendent of such admission centre by such member of the police force;

(e) where he is taken to such admission centre by a member of the police force who in writing informs the superintendent of such admission centre that such

such member believes such person to be a mentally ill person and that such member found such person wandering at large or committing some offence against the law or in circumstances which reasonably led him to believe that such person was about to commit some offence against the law :

Provided that a person admitted to or detained in an admission centre pursuant to paragraph (b), (c), (d) or (e) of this subsection shall be examined by the superintendent or a medical officer attached to such admission centre as soon as practicable after his admission thereto and shall not be detained therein after such examination unless such superintendent or medical officer certifies that in his opinion such person is a mentally ill person.

(2) Where a person informs a justice on oath that—

(a) he believes any other person to be a mentally ill person, and

(b) such other person is without sufficient means of support, or is wandering at large, or has been discovered committing some offence against the law or in circumstances which may reasonably lead a person to suspect that such other person was about to commit some offence against the law,

such justice may by order under his hand require a member of the police force to apprehend such other person and to take him to the nearest convenient admission centre.

(3) A member of the police force or welfare officer shall, and any other person may, if he believes that a person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the care and charge of him, so inform a justice on oath. Such justice shall either himself visit and examine the person in respect of whom he has been informed as aforesaid and make inquiry into the case, or by order under his hand direct and authorise some medical practitioner to visit and examine such person and report in writing

writing to such justice his opinion as to the matters of which such justice has been informed as aforesaid. If upon such visit, examination and inquiry by such justice, or upon the report of such medical practitioner it appears to such justice that such person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the control of him, such justice may by order under his hand require any member of the police force to take such person to the nearest convenient admission centre.

(4) The superintendent of an admission centre shall as soon as practicable after the admission of a person to such admission centre cause such person to be examined by two medical practitioners separately and apart from each other.

If either of such two medical practitioners does not recommend that further observation and treatment of such person in a mental hospital is necessary the superintendent shall cause such person to be examined by another medical practitioner.

Where the superintendent is not a person who gave a certificate pursuant to the proviso to subsection one of this section in respect of such person, such superintendent may be one of the medical practitioners aforesaid.

A medical practitioner upon whose certificate or request a person has been admitted to an admission centre shall not make any examination of such person for the purposes of this subsection.

(5) If after examination as aforesaid two medical practitioners recommend that further observation and treatment of such person in a mental hospital or authorised hospital is not necessary, such person shall be discharged from such admission centre.

(6) If after examination as aforesaid two medical practitioners recommend that further observation and treatment in a mental hospital or authorised hospital is necessary, such superintendent shall cause such person to be brought as soon as conveniently may be before a stipendiary magistrate.

Such recommendation shall be in or to the effect of the prescribed form.

(7) Where a medical practitioner making any examination of any person as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon making any recommendation that further observation and treatment of such person is necessary as aforesaid disclose that fact and give particulars thereof in such recommendation.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(8) The superintendent shall give due notice to the nearest known relative or a friend of such person of his intention to have such person brought before a stipendiary magistrate.

(9) The stipendiary magistrate shall upon such person being brought before him hold an inquiry and if he is satisfied after consideration of the recommendations by the medical practitioners as aforesaid and such other evidence as may be placed before him, that such person is a mentally ill person, he shall—

(a) direct that such person be detained in an admission centre, or be admitted to and detained in a mental hospital or authorised hospital, to be specified in such direction for further observation and treatment as a temporary patient for such period not exceeding six months as may be specified therein; or

(b)

(b) order the discharge of such person to the care of any relative or friend who satisfies such stipendiary magistrate that such person will be properly taken care of.

Where pursuant to an inquiry as aforesaid such stipendiary magistrate is not satisfied that such person is a mentally ill person he shall order that such person be discharged from such admission centre.

Such stipendiary magistrate may suspend the execution of any such direction or order for any period not exceeding fourteen days, and may give such directions for the proper care and control of such person in the meantime as such stipendiary magistrate thinks fit.

Where any medical practitioner certifies in writing after examining such person that such person is not fit to be moved from the admission centre in which he is then detained, such person shall not be moved from such admission centre until the same or some other medical practitioner certifies in writing that such person is fit to be moved as aforesaid.

(10) Any certificate given by a medical practitioner for the purposes of paragraph (a) of subsection one of this section shall be in or to the effect of the form set out in Part I of Schedule Two.

Where a medical practitioner giving any certificate as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon giving that certificate disclose that fact and give particulars thereof in such certificate.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(11) Where a medical practitioner is of the opinion that the assistance of a member of the police force is desirable in conveying a person, in respect of whom such medical practitioner has signed any such certificate, to an admission centre he may endorse such certificate in or to the effect of Part II of the form set out in Schedule Two.

Any

Any member of the police force to whose notice any such endorsement is brought shall as soon as practicable convey or assist in conveying such person to an admission centre or cause or make arrangements for some other member of the police force to convey or assist in conveying such person to an admission centre.

(12) Any direction or order given by a stipendiary magistrate, and any order given by a justice, pursuant to any of the provisions of this section, shall be in or to the effect of the appropriate prescribed form and shall have effect according to its tenor.

Mental Health Tribunals.

13. For the purposes of this Part of this Act there shall be such number of Mental Health Tribunals as the Minister may constitute.

A Tribunal shall consist of :—

(a) a psychiatrist;

(b) a medical practitioner; and

(c) a barrister or solicitor.

Temporary patients to be brought before Tribunal.

14. (1) If at the expiration of six months from the date of his admission to an admission centre, mental hospital or authorised hospital a temporary patient is still detained in an admission centre, mental hospital or authorised hospital, the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment;

(b) whether such patient should be detained in an admission centre, mental hospital or authorised hospital for further observation and treatment as a temporary patient for such period not exceeding three months as the Tribunal shall specify in such determination; or

(c) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(2) Where a Tribunal has made a determination under paragraph (b) of subsection one of this section and the patient in respect of whom such determination has been made is at the expiration of the period specified in such determination still detained in an admission centre, mental hospital or authorised hospital the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment; or

(b) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(3) Any determination under this section shall be embodied in an order in the prescribed form and any such order shall have effect according to its tenor.

Medical reviews by superintendents.

15. It shall be the duty of the superintendent to medically examine or cause to be medically examined, at such intervals as may be prescribed, all continued treatment patients with a view to determining whether or not their continued detention in an admission centre, mental hospital or authorised hospital is necessary.

PART

PART V.

DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION.

Discharge of patients by superintendent.

16. The superintendent—

(a) may at any time, if in his opinion further observation and treatment of a patient is not required, discharge such patient;

(b) may discharge a patient pursuant to an application in that regard made by such patient or by any relative or friend of such patient, whether or not, in the case of an application made by a relative or friend of such patient, an undertaking in writing has been given to the superintendent by such relative or friend that such patient will be properly taken care of and will be prevented from injuring himself or other persons; and

(c) shall so discharge a patient where an order for the discharge of such patient has been made under this Act by the Tribunal, the Director, a judge, a stipendiary magistrate, or the official visitors.

Appeal against superintendent's refusal to discharge patient.

17. Where the superintendent has refused an application for the discharge of a patient as aforesaid, such patient, or relative or friend of such patient, making such application may, in the case of a temporary patient, if a period of three months has elapsed since the date of admission of such patient to an admission centre, mental hospital or authorised hospital, and in the case of a continued treatment patient, at any time, appeal against such refusal to the Director or any two or more official visitors.

The Director or official visitors to whom such appeal is made shall consider the circumstances of the case and the report on the case obtained from the superintendent (which report the superintendent shall give when required by the Director or any such official visitors) in which his reasons for refusing the application are stated, and may, if he or they think

think fit, order the discharge of such patient from the admission centre, mental hospital or authorised hospital, in which he is detained.

Judge may order discharge of patient.

18. Where a judge receives information upon oath, or has reason or cause to suspect that any person who is not a mentally ill person is detained in any admission centre, mental hospital or authorised hospital such judge may order the superintendent of such admission centre, mental hospital or authorised hospital to bring such person before him for examination at a time to be specified in such order, and if upon the examination of such person, and of such superintendent, and of any medical or other witnesses, it appears to such judge that such person is not a mentally ill person, such judge may order that such person be immediately discharged from such admission centre, mental hospital or authorised hospital.

Patient may be permitted to be absent in certain circumstances.

19. (1) The superintendent may allow a patient to be absent from an admission centre, mental hospital or authorised hospital for such period as the superintendent may think fit, or for such period and at such place and on such conditions as the superintendent may think fit for the benefit of the patient's health.

(2) Where any patient is so allowed to be absent and does not—

(a) at the expiration of such period return to the admission centre, mental hospital or authorised hospital from which he has been so allowed to be absent and a certificate of a medical practitioner certifying that the detention of such patient as a patient is no longer necessary is not received by the superintendent before the expiration of such period, or

(b) comply with any condition upon which he is so allowed to be absent,

such patient may at any time after the expiration of such period or non-compliance with any such condition, as the case may be, be apprehended by a member of the police force and returned to such admission centre, mental hospital or authorised hospital.

(3)

(3) In this section "patient" includes a person detained in a mental hospital pursuant to section thirty-two of this Act.

Transfer of patients.

20. The Director may by order in writing direct the transfer of a patient from the admission centre, mental hospital or authorised hospital in which he is detained to an admission centre, mental hospital or authorised hospital. Any such order for transfer shall be a sufficient authority for the transfer of such patient and for his being received into and detained in the admission centre, mental hospital or authorised hospital to which he is ordered to be transferred.

PART VI.

VOLUNTARY PATIENTS.

Voluntary patients.

21. (1) A person may be admitted to and detained in an admission centre, mental hospital or authorised hospital as a voluntary patient—

(a) where such person is of or above the age of twenty-one years, upon an application in that behalf made by him;

(b) where such person is under the age of twenty-one years, upon an application in that behalf made by the person in whose care and custody he may be.

Such application shall be in writing and be made to the superintendent of such admission centre, mental hospital or authorised hospital.

(2) A superintendent shall, subject to the provisions of this section, discharge a voluntary patient within seven days after an application in writing for his discharge has been made to such superintendent—

(a) where such voluntary patient is of or above the age of twenty-one years, by such voluntary patient or some person on his behalf;

(b)

(b) where such voluntary patient is under the age of twenty-one years, by the person upon whose application he was admitted to and detained in an admission centre, mental hospital or authorised hospital pursuant to subsection one of this section.

(3) No person shall be admitted to an admission centre, mental hospital or authorised hospital under this section unless the superintendent is satisfied that such person is likely to be benefited by his being so admitted for care and treatment as a voluntary patient.

(4) A superintendent may—

(a) grant leave of absence to any voluntary patient;

(b) discharge any voluntary patient;

(c) if the condition of the voluntary patient so requires cause such action to be taken as may be necessary to have such voluntary patient admitted to and detained in an admission centre as a temporary patient.

Master may take charge of estates of voluntary patients in certain circumstances.

22. (1) The Master may take charge of the estate of a voluntary patient—

(a) who is of or above the age of twenty-one years, if he is requested so to do by such voluntary patient;

(b) who is under the age of twenty-one years, if he is requested so to do by the person on whose application such voluntary patient was, pursuant to subsection one of section twenty-one of this Act, admitted to and detained in an admission centre, mental hospital or authorised hospital.

(2) Where, pursuant to this section, the Master takes charge of the estate of a voluntary patient, he shall have in respect thereof all the powers, authorities, duties and functions which he has under Part XI of this Act in respect of the estate of a patient.

PART

PART VII.

MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES.

Procedure where persons charged with offences are found to be mentally ill by a jury or acquitted on the ground of being mentally ill. cf. Act No. 45, 1898, s. 65.

23. (1) If any person indicted for any offence is mentally ill and, upon arraignment, is found to be so by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person is found by the jury, before whom he is tried, to be mentally ill, the judge before whom any such person is brought to be arraigned or tried as aforesaid may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody in such place and in such manner as to such judge may seem fit until he is dealt with as provided by section twenty-four of this Act.

(2) In all cases where it is given in evidence upon the trial of any person charged with any treason, felony or misdemeanour that such person was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill, and such person is acquitted, the jury shall be required to find specially whether such person was at such time mentally ill and to declare whether such person was acquitted by them on the ground that he was at such time mentally ill.

In this subsection "mentally ill" means, in relation to any person charged as aforesaid, so insane as not to be responsible, according to law, for the act or omission the subject of the charge.

(3) If the jury find that such person was at the time the act or omission the subject of the charge was done or omitted to be done mentally ill as aforesaid, the judge before whom such trial is had shall order such person to be kept in strict custody, in such place and in such manner as to such judge seems fit until the Governor's pleasure is known, and thereupon the Governor may give such order for the safe custody of such person during the Governor's pleasure in a prison as the Governor deems fit.

(4)

(4) Upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, the Governor, by warrant under his hand, may direct that such person be conveyed to and detained in a mental hospital during the Governor's pleasure.

Persons found to be mentally ill before trial to be sent to mental hospital.

cf. Act No. 45, 1898, s. 66.

24. (1) When any person committed to take his trial for any offence is certified by two medical practitioners to be mentally ill, such certificates to be in or to the effect of the form of Schedule Three, or is upon arraignment found by verdict to be mentally ill, the Minister may direct, by order under his hand in or to the effect of the form of Schedule Four, that such person be removed to, and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall order his removal to a prison in order to be tried for such offence or if he is not to be so tried order that he be discharged.

(2) Such detention for any period shall not operate as a bar to his subsequent indictment and trial for such offence.

Procedure in reference to certain persons under detention appearing to be mentally ill.

cf. *Ibid.* s. 67.

25. If any person while detained in any prison for debt, or in any prison, or other place of confinement, in consequence of any summary conviction or order by any justice or in default of bail, appears to be mentally ill, the Minister may, upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct, by order under his hand, that such person be removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall, if such person remains subject to be continued in custody, order his removal to the prison or other place from where he was taken, or to some other prison or place of confinement, or if such person does not remain subject to be continued in custody order that he be discharged.

26. (1) In any case in which a person charged with an offence for which he has not been tried (in this section referred to as "the person charged") is detained in a mental hospital the Attorney-General, if he is of opinion that the question whether the person charged is fit to plead if put upon his trial should be determined by a jury, may by order under his hand direct that the person charged be removed from such mental hospital to some prison appointed by the Attorney-General and specified in the order.

Order by Attorney-General for trial of issue whether patient fit to plead if placed upon trial.

cf. Act No. 45, 1898, s. 67A.

(2) Such order shall be a sufficient warrant for the removal of the person charged from the hospital in which he is detained and for his detention in the prison appointed by the Attorney-General and specified in the order.

(3) The Attorney-General may further order that a jury of twelve persons be empanelled for trial of an issue whether the person charged is fit to plead if placed upon his trial.

(4) The said issue shall be tried at a time and place appointed by the Attorney-General before a judge of the Supreme Court or a chairman of Quarter Sessions.

(5) The governor of the prison in which the person charged is detained shall procure the attendance of the person charged at the time and place appointed for the trial of the said issue.

(6) At the request of the Clerk of the Peace the Sheriff shall summon thirty-six persons, chosen by him from the list of jurors in the jurors' list for the jurors' district within which the place appointed for the trial of the said issue is situated, to attend at the time and place appointed for the trial of the said issue.

(7) A jury of twelve persons shall be empanelled from the jurors in attendance at the court and the said issue shall be tried in accordance with the procedure adopted at a criminal trial where upon the trial of an indictment a question is raised whether the accused is fit to plead. The judge presiding at the trial shall have power to make any order including a power of postponement and give any directions which

which in his opinion are necessary for the trial of the issue. The jurors empanelled to try the issue shall be sworn in such manner as the court shall direct.

(8) If the jury find that the person charged is not fit to plead he shall be returned to the hospital from which he was removed.

(9) If the jury find that the person charged is fit to plead he shall be returned to prison.

(10) If a bill is found against him he shall be placed upon his trial.

(11) If a bill is not found against him a certificate shall be issued by the Attorney-General to the judges of the Supreme Court in accordance with the provisions of section three hundred and fifty-eight of the Crimes Act, 1900, as amended by subsequent Acts, and any of the said judges may thereupon direct the gaoler in whose custody the person charged may be to discharge him from custody.

(12) At the trial of the said issue the person charged shall be entitled to give evidence on oath or to make an unsworn statement.

(13) If the jury find that the person charged is fit to plead and he is placed upon his trial he shall be entitled to set up the defence that he was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill.

In this subsection "mentally ill" has the meaning ascribed thereto in subsection two of section twenty-three of this Act.

Procedure on certain prisoners appearing to be mentally ill.

cf. Act No. 45, 1898, s. 68.

27. If any person while imprisoned in any prison, under any sentence of hard labour or imprisonment imposed otherwise than on the conviction or order of justices appears to be mentally ill the Minister may upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct by order under his hand in or to the effect of the form of Schedule Four, that such person be removed

removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall if such person remains subject to be continued in custody, order his removal to the prison from where he was taken, or to some other prison, or if such person does not remain subject to be continued in custody order that he be discharged.

Procedure on prisoners under sentence of death appearing to be mentally ill.

cf. Act No. 45, 1898, s. 69.

28. If it is made to appear to the Minister by any means whatsoever that there is good reason to believe that any prisoner in confinement under sentence of death is then mentally ill, the Minister may appoint two or more medical practitioners to inquire into the mental health of such prisoner, and if on such inquiry such prisoner is found to be then mentally ill, the fact shall be certified in writing by such practitioners to the Minister, and on receipt of such certificate the Minister may, by order under his hand, direct that such prisoner be removed to and detained in a mental hospital until such prisoner is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall order that such person be removed to any prison or other place of confinement to undergo his sentence of death or to be dealt with according to law, as if no such order for his removal to and detention in a mental hospital had been made.

Governor may liberate on conditions.

cf. *Ibid.* s. 72.

29. When any person is ordered to be kept in custody during the Governor's pleasure, any order made by the Governor in relation to the custody of such person may be renewed and varied from time to time or revoked; and the Governor may permit any such person or any person conveyed to and detained in a mental hospital pursuant to a direction by the Governor, not being a person under conviction and sentence, to be liberated from custody or such mental hospital, upon such terms and conditions as the Governor may think fit; and if any such term or condition is broken, such person may be retaken and dealt with as provided in section thirty of this Act.

30.

Escaped mentally ill persons detained under this Part may be recaptured.

cf. Act No. 45, 1898, s. 73.

30. In case of the escape of any person detained in a mental hospital pursuant to the provisions of this Part of this Act he may be retaken at any time by the superintendent, or any officer, servant or other person employed therein, or any member of the police force, or any other person authorised by the Minister or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised and shall be conveyed and admitted to and detained in such hospital.

Penalties for assisting or permitting escape.

cf. *Ibid.* s. 74.

31. Any person who rescues any person being conveyed to or detained in any mental hospital pursuant to the provisions of this Part of this Act, and the superintendent or any officer, servant, or other person employed in any such hospital who, through wilful neglect or connivance, permits any person so detained therein pursuant to the provisions of this Part of this Act to escape therefrom, or conceals or abets or connives at any such escape, shall be guilty of an offence against this Act and shall be liable to imprisonment for a period not exceeding three years or a penalty not exceeding five hundred pounds or both such imprisonment and penalty.

Persons attempting to commit suicide and mentally ill not triable for the offence.

cf. *Ibid.* s. 75.

32. Any person committed to take his trial for having attempted to commit suicide who is certified by two medical practitioners in or to the effect of the form of Schedule Three to be mentally ill shall forthwith be sent to and detained in a mental hospital and such person, when certified by the superintendent and Director, or by the superintendent and an official visitor, to be not mentally ill, shall be discharged from such hospital, and shall not be put upon his trial or be liable to any charge or indictment for having attempted such act of suicide.

Security conditions for persons detained in mental hospitals under this Part.

33. (1) Any person detained in a mental hospital pursuant to the provisions of this Part of this Act shall be subject to such security conditions as the Director may deem necessary.

(2)

(2) The Director may by order in writing direct the transfer of a person detained in a mental hospital pursuant to this Part of this Act to any other mental hospital. Any such order for transfer shall be a sufficient authority for the transfer of such person and for his being admitted to and detained in the mental hospital to which he is ordered to be transferred.

PART VIII.

Welfare Officers.

Appointment and duties of welfare officers.

34. (1) For the purposes of this Act the Governor may appoint such welfare officers as he deems necessary.

(2) The powers, authorities, duties and functions of a welfare officer shall be: —

(a) on the direction of a superintendent to escort and convey or assist in escorting and conveying a patient to a mental hospital, where such patient has been granted leave of absence from such mental hospital and such patient's return is desirable on account of a breakdown in his mental health;

(b) to escort and convey or assist in escorting and conveying patients from a mental hospital to another mental hospital or to a public hospital;

(c) to visit patients, who are on leave of absence from mental hospitals, or their relatives or friends for the purpose of advising them on matters pertaining to the welfare of such patients;

(d) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon him by or under this Act or as may be assigned to him by the Director.

PART IX.

OFFICIAL VISITORS.

Appointment of official visitors.

35. (1) The Governor may appoint for every admission centre, mental hospital or authorised hospital, two or more official visitors, one of whom shall be a medical practitioner and one a stipendiary magistrate, barrister-at-law, or solicitor.

(2) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of an official visitor and such official visitor shall not in his capacity as such be subject to the provisions of any such Act.

(3) No person of or above the age of seventy years shall be appointed as an official visitor. An official visitor shall cease to hold office as such on the day upon which he attains the age of seventy years.

(4) Any two or more official visitors, one being a medical practitioner, shall visit the place for which they are appointed official visitors once at least every month with or without any previous notice, and at such hours of the day or night, and for such length of time as they think fit, and also at such other times as the Minister may direct.

(5) Any person who has any pecuniary interest, directly or indirectly, in an authorised hospital shall not be or act as an official visitor for any authorised hospital and no official visitor shall sign any certificate or request for the admission of any person to, or attend professionally upon, any patient in any admission centre, mental hospital or authorised hospital.

(6) Such official visitors, when visiting such admission centre, mental hospital or authorised hospital, shall, so far as practicable, inspect every part of the same and make such inquiries as they may deem necessary as to the care, treatment and control of the persons detained therein.

Duties of superintendents on visits by official visitors.

36. (1) The superintendent shall allow the official visitors visiting an admission centre, mental hospital or authorised hospital to have access to and inspect every part thereof and shall permit them to see and interview every person detained therein

therein, and shall give full and true answers to the best of his knowledge to all questions which the official visitors may ask in reference to the said admission centre, mental hospital or authorised hospital, and the persons detained therein, and shall produce to the official visitors such registers, books, records, orders, certificates, papers and other documents relating to the admission and discharge, care, treatment and control of persons detained therein, and furnish all such returns relating to any of the matters aforesaid, as may be required by such official visitors.

(2) The official visitors shall—

(a) examine and sign all registers, books and records produced to them in accordance with the foregoing provisions;

(b) on every visit to an admission centre, mental hospital or authorised hospital enter in the official visitors' book the fact of their visit with such observations as they think fit; and

(c) transmit to the Minister as soon as practicable after each such visit a report upon their visit containing such information as they deem necessary.

PART X.

Protected and Incapable Persons and Committees and Managers of Their Estates.

37. The Court shall, except on appeal as hereinafter provided, be holden by the Chief Judge or a judge in Equity, or by any other judge sitting for the Chief Judge in Equity during his absence from Sydney or illness or at his request: **Constitution of Court.** Act No. 45, 1898, s. 101.

Provided that any such judge may sit in chambers to determine all such matters as in his opinion may advantageously and with propriety be heard in chambers; and such judge when so sitting shall have the same powers and jurisdiction as in open court.

38. Where it is proved to the satisfaction of the Court that a person is mentally ill and incapable of managing his affairs, the Court may make a declaration to that effect, and may direct a reference to the Master to make inquiries concerning the property of such person, and may make all proper orders for rendering the property of such person, or the income thereof available for the payment of his debts and for the maintenance or benefit of himself and his family, and for carrying on his trade or business (if any), and may, if necessary, appoint, either with or without security, a committee of his estate, and also when desirable appoint a committee of his person.

Declarations of Court as to persons being mentally ill.
cf. Act No. 45, 1898, s. 102.

39. (1) Where it is proved to the satisfaction of the Court that any person is, through mental infirmity, arising from disease or age, incapable of managing his affairs, the Court may make all proper orders for rendering the property and income of the said person available for the payment of his debts and for the maintenance and benefit of himself and his family; and may make orders for the care and management of his property in all respects as if he were a protected person; and may, if necessary, appoint a manager, either with or without security, to undertake the care and management of his property under the order and direction of the Court.

Persons incapable of managing their affairs.
cf. *Ibid.* s. 103.

(2) The manager shall, subject to the said orders and directions and to the rules of Court, have the same powers and be subject to the same obligations and control as a committee, appointed under section thirty-eight of this Act, of the estate of a protected person, and the powers and provisions contained in this Act relating to the management and administration of the estates of protected persons shall apply to the estates of incapable persons.

40. Where it is proved to the satisfaction of the Court that any protected person or incapable person has recovered his mental health and is capable of managing his affairs, the Court may make a declaration to that effect, and may make all proper orders to give effect to such declaration, and to release the property of such person from the control of the Court

Superseding orders, etc. when person has recovered.
cf. *Ibid.* s. 104.

Court or the manager, as the case may be, and to discharge the committee of his estate and the committee (if any) of his person or the manager, as the case may be.

Mode of application. cf. Act No. 45, 1898, s. 105.

41. Applications under sections thirty-eight, thirty-nine and forty of this Act shall be made, and evidence by affidavit given in support thereof, in such manner as is prescribed by rules of Court:

Provided that every deponent may be cross-examined upon his affidavit either at the hearing or at such time and place as the Court may direct, and at such hearing the Court may receive or require the oral evidence of witnesses and such other proofs as may be deemed necessary.

Service of process. cf. *Ibid.* s. 106.

42. Notice of any applications under sections thirty-eight, thirty-nine and forty of this Act and of the evidence by affidavit to be given in support thereof shall be given to such persons, in such manner and within such time as may be prescribed by rules of Court.

Court may order inquiry before a jury. cf. *Ibid.* s. 107.

43. The Court in any case, instead of determining whether or not the person whose mental health is the subject of inquiry is mentally ill and incapable of managing his affairs, or is through mental infirmity, arising from disease or age, incapable of managing his affairs, may order that question to be determined by a jury; and thereupon the like proceedings for procuring the return of such jury shall be had and taken as provided by any law for the time being in force for the return of juries in the Supreme Court, and in every proceeding before a jury pursuant to this section the number of the jury shall be four, unless the Court order a jury of twelve.

Inquiries before jury. cf. *Ibid.* s. 108.

44. Where any such inquiry before a jury is ordered, the Court shall direct the question to be tried before a judge or the Master, or a commissioner specially appointed, who shall while so acting have for the purpose of the inquiry all the powers of the Supreme Court; and the trial of every such question and the verdict thereon shall be had and dealt with in all respects in accordance with any law for the time being in force relating to the trial of issues out of the Supreme Court.

After verdict Court may make declarations and orders.

45. When the verdict of the jury has been returned, unless a new trial is granted, the Court may make such declaration and orders as mentioned in sections thirty-eight and thirty-nine of this Act, as the case may require.

cf. Act No. 45, 1898, s. 109.

Examination of person whose mental health is in question.

46. On the hearing of any application under section thirty-eight or thirty-nine of this Act the person whose mental health is in question shall be examined by the Court; and on the trial of any such question as abovementioned there shall be a like examination by the jury before they consult as to their verdict, and every such examination shall take place in open court or in private, as may be deemed expedient:

Provided that, if it appears to the Court to be unnecessary or inexpedient that such person should be examined by the Court, or the jury, the Court may, in lieu of the examination aforesaid, direct the Master to personally examine the said person and report on such examination, or may dispense with any examination whatever.

cf. *Ibid.* s. 110.

Construction of references to commission of Lunacy and certain like expressions

47. Where in any Act or rule of Court or instrument, reference is made to a commission of Lunacy, or a writ in the nature of a writ de lunatico inquirendo, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission, the application and declaration or orders thereon in sections thirty-eight and forty of this Act mentioned, as the case may require, shall be taken to be intended by or comprehended in such reference.

cf. *Ibid.* s. 111.

Persons found mentally ill in places outside N.S.W.

48. When the Court is satisfied that any person has been found mentally ill and incapable of managing either himself or his affairs or both by any commission de lunatico inquirendo, or other legal inquiry in any part of the British Commonwealth of Nations outside New South Wales or in any other country to which the Governor by proclamation published in the Gazette extends the provisions of this section, the Court may direct a copy of the inquisition or finding on such commission or inquiry, duly certified by the proper officer of the Court or other authority into which such inquisition or finding has been returned

cf. *Ibid.* s. 112.

returned, to be filed of record in the Court; and may thereupon appoint a committee of such person's estate or person, or both, and may give such other orders in respect of the management of his estate or person as it deems fit; and such committee shall have the same duties, powers, and liabilities as if he were the committee of the estate or person of a protected person.

Court may order costs. cf. Act No. 45, 1898, s. 113.

49. The Court may make such order as to the costs, charges, and expenses of and incidental to any proceeding authorised by this Act as the Court thinks proper, and every such order shall have the same effect as orders for the payment of money made by the Supreme Court in its equitable jurisdiction.

Appeal. cf. *Ibid.* s 114.

50. (1) There shall be an appeal to the Full Court of the Supreme Court from every order or decision made under this Act before or by a single judge in such manner as may be prescribed by rules of Court.

(2) Every person so appealing shall within fourteen days from the time of filing such appeal, either—

(a) deposit with the Master such sum, not exceeding one hundred pounds, as the Master directs; or

(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.

(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.

(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.

PART

PART XI.

MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS.

Division 1.—*General Powers and Duties of Master.*

Master in Protective Jurisdiction of Supreme Court.

51. There shall be a Master in the Protective Jurisdiction of the Supreme Court, who shall be the person for the time being holding the office of Master in Equity.

cf. Act No. 45, 1898, s. 115.

The Governor may appoint a Deputy Master. The Deputy Master may exercise all the powers conferred and shall perform all the duties imposed upon the Master by any Act or by any rule or order of the Court. During the illness or absence of the Deputy Master, the Court or the Chief Judge or a judge in Equity may authorise the Chief Clerk in the Protective Jurisdiction of the Supreme Court to exercise all the powers conferred and perform all the duties imposed upon the Master.

Administration of estates of certain persons.

cf. *Ibid.* s. 116.

52. (1) Subject to rules of Court, the jurisdiction and powers of the Court in respect of the administration and management of the estates of all protected persons and incapable persons may be exercised by the Master; and every order made by the Master under the authority hereby conferred on him shall take effect, unless rescinded or varied by the Court; and the Master shall have and execute all the powers and duties hereby or under the authority hereof vested in and imposed upon him; and subject to and in accordance with the regulations and the rules of Court and to any special order of the Court, the Master shall undertake the general care, protection, and management, or supervision of the management, of the estates of all patients, protected persons and incapable persons; and he shall supervise and enforce the performance of the obligations and duties of all committees under this Act, and shall take care of, collect and administer, under the provisions of this Act, the property and estates of all patients.

(2)

(2) The Master may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stockbroker or any other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate of any patient, protected person or incapable person.

(3) The Master shall not be responsible for the default of any such agent if employed in good faith.

Expenses incurred to be paid out of estate.
cf. Act No. 45, 1898, ss. 117, 118.

53. All expenses incurred by or on behalf of the Crown, in the care, protection, and management, or in the supervision of the management, under this Act, of the estate of any patient, protected person or incapable person, may be charged by the Master against and shall be paid out of and recoverable from such estate or may be paid by the Master out of any money of such patient, protected person or incapable person that comes to his hands, or may be recovered by him on summary application to the Court, whether or not such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Percentages.
cf. *Ibid.* s. 119.

54. There shall be paid to the Master a percentage at such rate not exceeding five pounds per centum per annum as may be fixed by rule of Court on the clear annual income of every patient, protected person and incapable person; and the said percentage shall be charged upon and payable out of the estate of such patient, protected person or incapable person whether or not, before payment, such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Master to have all necessary powers of inquiry, taking evidence, etc.
cf. *Ibid.* s. 120.

55. (1) The Master may in the execution or performance of his powers, authorities, duties and functions, and also in the prosecution of all inquiries and matters which may be referred to him under this Act, summon persons before him and administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit, and take recognizances and require the production of books, papers, accounts,

accounts, and documents; and every person so summoned shall be bound to attend as required by the summons and give evidence before the Master in like manner as persons summoned before him in his equity jurisdiction are bound to attend and to give evidence; and the Court may by any order (general or particular) refer to the Master any inquiries under the provisions of this Act relating to the person and estate of any person.

(2) Every person who does not appear pursuant to such summons (having had his reasonable expenses paid or tendered to him at the time of service of such summons), or does not assign some reasonable excuse for not so appearing, or appears and refuses to be sworn or examined shall, for every such neglect or refusal, be liable to a penalty not exceeding ten pounds.

Witnesses may be cross-examined orally.
cf. Act No. 45, 1898, s. 121.

56. Every person giving evidence by affidavit shall be liable to oral cross-examination by or before the Master upon his affidavit, and after cross-examination may be re-examined orally by or on behalf of the person filing the affidavit; and every person giving evidence by affidavit shall be bound to attend before the Master to be so cross-examined and re-examined upon receiving due and proper notice and payment or tender of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena ad testificandum before the Master; and the expenses attending on such cross-examination and re-examination shall be paid in such manner and by such person as the Master directs.

Master may issue advertisements.
cf. *Ibid.* s. 122.

57. The Master may cause to be issued such advertisements as may to him seem expedient with reference to the subject matter of a proposed inquiry or with a view to the efficient discharge of his duties as Master under this Act with regard to the estate and property of any person.

Master to approve of and to enforce security to be given by committee of estate.
cf. *Ibid.* s. 123.

58. The Master shall approve on behalf of Her Majesty of the security to be given by the committee of the estate of any person under order of the Court pursuant to this Act, and it shall be the duty of the Master to see that the conditions of all bonds and recognizances heretofore or hereafter to be given or entered into by the committee of the estate

estate or other persons in the matter of the estate shall be faithfully and regularly observed and performed, and immediately to report to a judge any breach or non-performance of any of such conditions; and thereupon such judge may cause such bond or recognizance to be forfeited or estreated, and such forfeiture or estreat shall be enforced and effected in the manner provided by any law now or hereafter to be in force relating to the estreat of recognizances entered into to Her Majesty.

Division 2.—Powers and Duties of Master in Respect to Estates of Patients.

Powers of Master in respect of estates of patients.

cf. Act No. 45, 1898, s. 124.

59. The Master shall have in respect of the property and estate of any patient, in addition to the general powers conferred upon him in Division 1 of this Part of this Act, all the like powers and authorities, subject to the like limitations, as are hereinafter, in Division 3 of this Part of this Act, given to the committee of the estate of a person, and also the powers hereinafter mentioned.

Power to apply property of certain acquitted persons for their benefit.

cf. *Ibid.* s. 125.

60. Where any person has on the trial of any information been acquitted as referred to in subsection two of section twenty-three of this Act or has upon arraignment upon a criminal charge been found to be mentally ill, the Sheriff shall report the fact to the Master, who shall thereupon make inquiry respecting the property of such person, and the Court may, on being satisfied that such person is still a mentally ill person and is still in confinement, make any orders with respect to the property of such person 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.

Master's powers as to property of patients.

cf. *Ibid.* s. 126.

61. The Master shall have the management and care of the property of every patient, and in addition to other powers and duties necessary and incident to such management and care,

care, may exercise the following powers and perform the following duties with respect to the estate of every patient, that is to say, he may : —

(a) receive moneys, rents, incomes, and profits of real and personal property;

(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 one thousand 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, suits, and other proceedings on behalf of the patient;

(j) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

Master may apply to the Court as to the exercise of certain powers.
cf. Act No. 45, 1898, s. 127.

62. (1) The Master may apply to the Court in such manner as may be prescribed by rules of Court, for directions with respect to the exercise of any of the powers over the estate of a patient which the Court may exercise, or order a committee to exercise, over the estate of any person, under Division 3 of this Part of this Act.

(2) The Court 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.

Master may execute instruments on behalf of patient.
cf. *Ibid.* s. 128.

63. (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 not mentally ill, and may, in the name and on behalf of the patient, execute and sign deeds, instruments, transfers of shares, receipts, releases, and other documents, which shall be as effectual as if executed and signed by the patient himself while not mentally ill, 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 is a patient or not.

(2) 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 is 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.

Summary proceedings for protection of property of patients.
cf. *Ibid.* s. 129.

64. (1) If any real or personal property of a patient is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient by any person, the Master may as such Master claim and recover possession of such property or damages for the conversion or injury thereof,

thereof, or payment of the said sum by summary proceeding on complaint before a judge who is hereby authorised and required on proof to his satisfaction of the said cause of complaint to make an order requiring the defendant to give up possession of such property, or to pay reasonable damages to be fixed by the said order for the conversion or injury thereof, or to pay the sum so due as aforesaid, and in default of compliance by the defendant with the said order, to order in and by the same or any subsequent order that the defendant be committed to prison for any period not exceeding six months.

(2) Such judge may in any complaint under this section make such order as to costs as he thinks fit, and every order under this section shall have the same effect, and may be enforced in like manner as any judgment, decree, or order of the Supreme Court in its jurisdiction at law or in equity.

Payments to consolidated revenue.

65. (1) 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 may from time to time appoint, all money paid to him for the maintenance of any patient, and all percentages.

cf. Act No. 45, 1898, s. 130.

(2) 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.

(3) A separate current 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.

66. The Master may apply moneys standing to the credit of the current account of a patient in the trust fund towards all or any of the following purposes: —

cf. *Ibid.* s. 131.

(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)

(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 not a mentally ill person;

(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 taking up of the rights to issues of new shares to which a patient becomes entitled by virtue of his existing shareholdings;

(g) the investment, in manner hereinafter provided, of money not presently required for the above purposes;

(h) the payment to a patient or any person in accordance with the provisions of section seventy-one or seventy-three of this Act:

Provided that the Master may report to and apply for the advice and directions of the Court upon any of the matters aforesaid; and the Court 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 to be made, and notices given as may be deemed advisable, and may make such orders in the premises as may be thought proper.

Investment on purchase of land. cf. Act No. 45, 1898, s. 133.

67. The Master may, with the leave of the Court, to be obtained in such manner as is or may from time to time be prescribed by rules of Court, invest any money unapplied as aforesaid in the purchase of land, if such purchase appear to the Court to be desirable for the purpose of protecting the estate of the patient from injury or deterioration in value, of increasing the value or facilitating the sale of other lands of the estate, or of providing a home for the patient or his dependants; and the Court may, on the hearing of the application, deal with the same ex parte, or require notice to be served on any person.

68.

Common fund.

cf. Act No. 19, 1913, s. 36A.

68. (1) Subject to this Act balances to the credit of all current accounts in the trust fund at the commencement of this Act and at any time thereafter shall be one common fund and shall be available for investment as provided in this Act.

(2) Interest received from investments from the common fund shall be credited to an account styled "Interest Account" and shall be allocated therefrom as provided in this section.

The costs and expenses of such allocation shall be a charge on the common fund.

(3) Interest shall be allowed on all balances forming part of the common fund, and shall be credited at such rate or rates and at such time or times as the Master may determine.

Investment of common fund and moneys unapplied under s. 66.

cf. *Ibid.* s. 36D.

69. Moneys unapplied as aforesaid and moneys in the common fund may be invested—

(a) in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts; or

(b) on deposit with the Colonial Treasurer for a period or periods not exceeding twelve months in any one case, which deposit shall bear interest at the prescribed rate and any such deposit may be renewed from time to time for a like period and subject to the like conditions.

Withdrawal from the common fund.

cf. *Ibid.* s. 36E.

70. (1) The Master may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund and standing to the credit of the current account of any patient for any purpose of or relating to the exercise and discharge by the Master of his powers, authorities, duties and functions in the care, protection and management of the estate of such patient.

(2) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund.

71.

71. (1) If any patient is permitted to be absent from an admission centre, mental hospital or authorised hospital under the provisions of this Act, the Master may, in his discretion, pay over to the patient, or to any person on his behalf who gives 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 his current account 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. Payment over of estate before discharge in certain cases. cf. Act No. 45, 1898, s. 134.

(2) 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.

72. 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 may, on application being made by the Master in such manner as is or may from time to time be prescribed by rules of Court, and on notice being given to such persons as the Court 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 a mentally ill person at the time when he made or executed the transfer, sale, alienation, charge, or lease. Sale, etc. by patient before his discharge may be set aside. cf. *Ibid.* s. 135.

73. (1) 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 his current account 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, documents and chattels forming part of his estate. Payments to discharged patients and to personal representatives of deceased patients. cf. *Ibid.* s. 136.

(2) 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.

(3)

(3) The Master, in his discretion, may continue to have the care, protection and management of the estate of a discharged patient until the discharged patient obtains an order of the Court or the Master is satisfied that the discharged patient is capable of managing his own affairs.

(4) The Master, in his discretion, may after the death of a 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, documents 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 that probate of the will or letters of administration have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Unclaimed personal effects and moneys of patient.

cf. Act No. 45, 1898, s. 137.

74. (1) All personal effects in the hands of the Master belonging to a patient, and not claimed within two years from the date of the death or 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.

(2) All moneys standing to the credit of a patient in his current account in the trust fund at the end of six years from the date of the death or discharge of that patient shall be carried to and form part of the consolidated revenue.

(3) Nothing herein contained shall affect the right of a person under disability by reason of his being an infant, a mentally ill person or absent 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.

cf. *Ibid.* s. 138.

75. (1) 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.

(2)

(2) On the discharge or death of a patient, he or his legal personal representative (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 not a mentally ill person.

Relatives, etc., may agree for maintenance of patient. cf. Act No. 45, 1898, s. 139.

76. The Master may agree with any relative, guardian, or friend of any patient detained in an admission centre, mental hospital or authorised hospital for his maintenance while detained therein, and such relative, guardian, or friend shall be entitled to be reimbursed all necessary sums expended in such maintenance and interest thereon out of any real or personal property of such patient.

Owner, etc., of ship or aircraft liable for maintenance of certain mentally ill persons. cf. *Ibid.* s. 140.

77. (1) If within sixty days after the arrival of any ship or aircraft in New South Wales the Master has reasonable cause to believe that a passenger or member of the crew arriving by that ship or aircraft is a mentally ill person and has become, or is likely to become, a charge upon the public as a patient in an admission centre or mental hospital, it shall be lawful for the Master thereupon to require the owner, charterer, agent, or master of that ship or aircraft to execute, with two sufficient sureties, jointly and severally, a bond to Her Majesty in such sum as the Master may determine, not exceeding three thousand pounds, conditioned to pay to the Master the maintenance of that passenger or member of the crew in such admission centre or mental 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 of the ship or aircraft, subject to the approval of the Master, to return such passenger or member of the crew to the place whence he was transported.

(2) 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.

(3) No bond shall be required when the passenger or member of the crew is, at the date of the arrival of the ship or aircraft, domiciled in New South Wales; but the onus of proving such domicile as aforesaid shall be upon the said owner, charterer, agent, or master of the ship or aircraft.

Neglect or refusal to execute bond.

78. If the said owner, charterer, agent, or master of the ship or aircraft 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 three thousand pounds, to be recovered summarily before a stipendiary magistrate.

cf. Act No. 45, 1898, s. 141.

Cost of maintenance of patient may be recovered.

79. The cost to the Crown of the maintenance of a patient shall constitute a debt due to the Crown and shall be recoverable accordingly from the patient or his estate:

Provided that if the Master considers that undue hardship would be occasioned by the enforcement of such debt or other circumstances so warrant he may in his discretion either forego the debt altogether or accept a smaller sum in satisfaction thereof.

Court may direct Master to report as to mental health of any patient.

80. The Court may direct the Master to personally examine any patient, and take evidence and call for information as to the mental health of such patient, and report thereon to the Court, and the Court may make orders for and with respect to—

cf. *Ibid.* s. 148.

(a) the appointment of a guardian or otherwise for the protection, care, and management of the person or of the estate, or of the person and estate, of any patient who by any such report is found to be a mentally ill person; such guardian, according to the nature of his appointment, to have the same powers and authorities, and be subject to the same control and liabilities, as a committee of the person and estate of a protected person appointed under this Act;

(b) the appointment of a receiver or otherwise for the protection, care and management of the estate of such patient; such receiver to have the same powers and

and authorities and be subject to the same control and liabilities as a receiver of the estate of a protected person appointed under this Act;

(c) the application of the income of such patient or a sufficient part thereof for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such patient, and of or in connection with the said examination by the Master and the obtaining of such orders by the Court;

(d) the investment or other application for the purpose of accumulation or otherwise of the surplus (if any) of such income as lastmentioned for the use of such patient, his wife, or children as to the Court may seem fit.

Division 3.—Management of Estates of Certain Persons not being Patients.

81. (1) The Court may order that any property of a protected person be sold, charged, mortgaged, dealt with, or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to all or any of the purposes following:— Power to raise money for certain purposes. cf. Act No. 45, 1898, s. 149.

(a) payment of such protected person's debts or engagements;

(b) discharge of any incumbrance on his property;

(c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit;

(d) payment of or provision for the expenses of his future maintenance;

(e) payment of the costs of any proceeding under this Act, or of any sale or other disposition made under this Act.

(2) In case of a charge or mortgage being made under this Act for the expenses of future maintenance the Court may direct the same to be payable, either contingently, if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as the Court thinks expedient.

82. The Court may by order authorise and direct the committee of the estate of a protected person to do all or any of the following things: —

Powers exercisable by committee under order of Court.

cf. Act No. 45, 1898, s. 150.

(a) sell any property belonging to such protected person;

(b) make exchange or partition of any property belonging to such protected person, or in which he is interested, and give or receive any money for equality of exchange or partition;

(c) carry on any trade or business of such protected person;

(d) grant leases of any property of such protected person for building, agricultural or other purposes;

(e) surrender any lease and accept a new lease;

(f) accept a surrender of any lease and grant a new lease;

(g) execute any power of leasing vested in such protected person having a limited estate only on the property over which the power extends;

(h) perform any contract relating to the property of such protected person entered into by him before he became a protected person;

(i) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to such protected person;

(j)

(j) exercise any power or give any consent required for the exercise of any power where the power is vested in such protected person for his own benefit, or the power of consent is in the nature of a beneficial interest in such protected person;

(k) sequestrate the estate of such protected person under the provisions of the bankruptcy laws;

(l) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts;

(m) bring and defend actions, suits, and other proceedings on behalf of such protected person.

Property exchanged and renewed lease to be to same uses as before. cf. Act No. 45, 1898, s. 151.

83. Any property taken in exchange and any renewed lease accepted pursuant to this Act on behalf of a protected person under the powers of this Act, shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

Extent of leasing power. cf. *Ibid.* s. 152.

84. (1) The power to authorise leases of a protected person's property under this Act shall extend to property of which the protected person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the protected person, and all persons entitled in remainder and reversion expectant upon the estate tail of the protected person including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the protected person shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the protected person or his committee would have had.

(2) Leases authorised to be granted and accepted by or on behalf of a protected person under this Act may be for such number of lives or such term of years at such rent and subject to such reservations, covenants, and conditions as the Court may order.

(3) Fines or other payments on the renewal of leases may be paid out of the estate of the protected person, or charged with interest on the leasehold property, as the Court may order.

Interest in property of certain persons not to be altered.
cf. Act No. 45, 1898, s. 153.

85. (1) Any patient, protected person or incapable person, his heirs, next of kin, devisees, legatees, executors, administrators, and assigns shall have the same interest in any moneys or other property arising from any sale, mortgage, charge, disposition of any property or other dealing therewith under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made, and the surplus moneys or other property shall be of the same nature as the property sold, mortgaged, charged, disposed of or dealt with.

(2) Moneys received for equality of partition and exchange, and all fines, premiums, and sums of money received upon the grant or renewal of a lease where the property, the subject of the partition, exchange, or lease was real estate of the patient, protected person or incapable person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate, except in the case of fines, premiums and sums of money received upon the grant or renewal of leases of which the patient, protected person or incapable person was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the patient, protected person or incapable person.

(3) In order to give effect to the foregoing provisions of this Act the Court may make such orders and direct such conveyances, deeds, and things to be executed and done as it thinks fit.

Expenses of improvements may be charged on estate.

cf. Act No. 45, 1898, s. 154.

86. (1) The Court may order that the whole or any part of any moneys expended or to be expended under its order for the permanent improvement, security, or advantage of the property of a protected person or of any part thereof, shall with interest be a charge upon the improved property or any other property of the protected person, but so that no right of sale or foreclosure during the lifetime of the protected person shall be conferred by the charge, and the interest shall be kept down during his lifetime out of the income of his general estate as far as the same is sufficient to bear it.

(2) The charge may be made either to some person advancing the money, or, if the money is paid out of the protected person's general estate to some person as a trustee for him as part of his personal estate.

Court may order certain estates to be applied for maintenance.

cf. *Ibid.* s. 155.

87. Where the net amount or net estimated value of the property of any protected person does not exceed the sum of five hundred pounds, the Court may order the amount of the property or the produce thereof when realised to be paid or transferred to some fit person, to be applied in or towards the maintenance of the protected person, either at the discretion of such fit person, or in such manner, and subject to such control as the Court may direct, and for the purpose of giving effect to any such order the Court may order any real estate or other property whatsoever of the protected person to be sold, and a valid conveyance or transfer thereof to be executed or made by such fit person as it shall direct.

Application of income for temporary maintenance.

cf. *Ibid.* s. 156.

88. (1) Where it appears to the Court that there is reason to believe that the mental illness of any protected person is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of such protected person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income, or of ready money belonging to the protected person, and standing to his account with a banker

banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as it may think proper for the temporary maintenance of the protected person and the members of his immediate family who are dependent upon him for maintenance, and may order the payment of any such sum of money as aforesaid, or any part thereof, to some fit person, and may direct the same to be paid to such fit person accordingly, and when received to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid.

(2) The receipt in writing of the person named in the order to whom payment is to be made for any moneys payable to him by virtue thereof shall effectually discharge the banker, agent, or other person paying the same from the moneys therein respectively expressed to be received.

(3) The person so receiving any moneys by virtue of this section shall pass an account thereof before the Master when required.

89. Where a person, being a member of a partnership, becomes a protected person the Court may, by order, dissolve the partnership.

Court may dissolve partnership.

cf. Act No. 45, 1898, s. 157

90. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of a protected person, execute, make, and do all such conveyances, deeds, transfers, and things for giving effect to any order under this Act as the Court directs; and every such conveyance, deed, transfer, and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

Power to carry orders into effect.

cf. *Ibid.* s. 158.

91.

Committee may act as trustee or guardian in certain cases.

cf. Act No. 45, 1898, s. 159.

91. Where a power is vested in a protected person in the character of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the committee of the estate, in the name and on behalf of the protected person, under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

Appointment of new trustees by committee.

cf. *Ibid.* s. 160.

92. Where under this Act the committee of the estate, under order of the Court, exercises in the name and on behalf of a protected person a power of appointing new trustees vested in him the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same rights and powers as they would have had if the order had also been made by the Supreme Court under any law for the time being in force relating to trusts; and the Court may in such case where it seems to be expedient make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of any such law as aforesaid on the appointment thereunder of new trustees.

Temporary provision for maintenance.

cf. *Ibid.* s. 161.

93. In any case where, pending the appointment of a committee, it appears to the Master desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the protected person or any member of his family out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Master may, by certificate, authorise such banker or other person to pay to the person to be named in such certificate such sum as he certifies to be proper; and may, by such certificate, give any directions as to the proper application thereof for the protected person's benefit by that person, who shall be accountable for the same, as the Master directs.

94.

Transfer of stock belonging to certain persons.

cf. Act No. 45, 1898, s. 162.

94. Where any stock is standing in the name of or is vested in a protected person beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a protected person in trust for the protected person or as part of his property, and the committee dies intestate or himself becomes a mentally ill person or is out of the jurisdiction, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new committee or as he directs for the space of fourteen days after a request in writing for that purpose made by a new committee, then the Court may order some fit person to transfer the stock to or into the name of a new committee or otherwise, and also to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court directs.

Stock in name of mentally ill persons residing out of State may be ordered to be transferred.

cf. *Ibid.* s. 163.

95. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction that a declaration to the effect that such person is a mentally ill person, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock to or into the name of the curator or other person appointed as aforesaid or otherwise, and also to receive and pay over the dividends thereof as the Court thinks fit.

Who shall be appointed to make transfer.

cf. *Ibid.* s. 164.

96. Where an order is made under this Act for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the company, society or association in whose books the transfer is to be made.

Costs and remuneration may be paid out of estate.

cf. *Ibid.* s. 165.

97. The Court may order the costs and expenses of and relating to the petitions, applications, orders, directions, conveyances, and transfers to be presented or made in pursuance of this Part of this Act to be paid and raised out of or from the property, or the rents, income, or profits in respect of which the same respectively shall be presented or made in such manner as it may think proper; and the Court may order such sum by way of remuneration to be paid out of the estate to the committee of any protected person as the Court may think fit.

98.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

98. Every conveyance, lease, surrender, transfer, charge, or other disposition made or accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons whomsoever; and this Act shall be a full indemnity and discharge to all persons for all acts and things done or permitted to be done in pursuance thereof, or of any order of the Court made or purporting to be made under this Act.

cf. Act No. 45, 1898, s. 166.

Act not to subject property of protected persons to debts.

99. Nothing in this Act contained shall subject any part of the property of a protected person to the debts or demands of his creditors, further or otherwise than as the same was immediately before the commencement of this Act subject thereto by due course of law.

cf. *Ibid.* s. 167.

PART XII.

Special Provisions Relating to the Property of Mentally Ill Patients Residing Outside New South Wales.

Interpretation and application of Part.

100. (1) In this Part of this Act—

"Reciprocating state" means any part of Her Majesty's dominions outside New South Wales which has been declared under subsection two of this section to be a reciprocating state for the purposes of this Part of this Act.

cf. *Ibid.* s. 167A.

(2) Where the Governor is satisfied that the laws in force in any part of Her Majesty's dominions outside New South Wales are such as to enable powers to be exercised in that part in cases of patients residing in New South Wales substantially similar to the powers conferred by this Part of this Act in cases of mentally ill patients residing in that part, the

the Governor may by proclamation published in the Gazette declare that part to be a reciprocating state for the purposes of this Part of this Act, and thereupon that part shall become a reciprocating state within the meaning of this Part of this Act.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

(4) References in the foregoing provisions of this section to Her Majesty's dominions outside New South Wales shall be construed as including references to any territory which is under Her Majesty's protection and to any territory the subject of a trusteeship agreement approved by the General Assembly of the United Nations which is under the administration of a government of any part of Her Majesty's dominions.

Powers of Master as to property in New South Wales of mentally ill patients in reciprocating state.

cf. Act No. 45, 1898, s. 167B.

101. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property and estates of mentally ill patients in any hospital or other institution situated in that state and authorised for the reception and care of mentally ill persons—

(a) certifies in writing under his hand and seal to the Master that any person is a mentally ill patient residing in that state and is confined in any such hospital or other institution and that he is possessed of or entitled to or appears to be entitled to or interested in real or personal property in New South Wales; and

(b) by instrument in writing under his hand and seal authorises the Master to collect, recover, manage, sell or otherwise dispose of and administer such property or to make inquiry respecting such property,

the Master shall have and may exercise over and in respect of such property the same powers of collection, recovery, management, sale, disposition, administration, and inquiry as he

he would have had and may have exercised over such property if such mentally ill patient had been resident in New South Wales and a patient within the meaning of this Act; and the provisions of this Act apply in respect of such property accordingly.

(2) Where the Master has, pursuant to any such authority as is referred to in paragraph (b) of subsection one of this section and in the exercise of the powers conferred upon him by that subsection, received any moneys or properties, the Master may, after—

(a) payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and

(b) satisfying or providing for the following debts and claims of which he has notice, namely, debts of the mentally ill patient named in such authority owing to persons resident in New South Wales and the claims of persons so resident against that patient,

pay over or deliver the balance of such moneys or properties to the officer of the reciprocating state who signed such authority or his successor in office, without seeing to the application thereof, and without incurring any liability in respect of such payment over or delivery, and shall duly account to that officer or his successor for that balance.

PART XIII.

Court Visitors.

102. The Court may by general rule or special order:— Court may order protected or incapable persons to be visited.

(a) direct the Director or other fit person to visit any protected person or incapable person and to make a report in writing to the Court or a judge of the state

cf. Act No. 45, 1898, s. 168.

state of mind and bodily health and general condition, and also of the care and treatment of the person visited;

(b) 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 assets of the person visited, and as to the orders of the Court made in respect thereof;

(c) order that any fees and expenses connected with the visit be paid out of the estate of the person visited.

PART XIV.

MISCELLANEOUS PROVISIONS.

Offences in relation to certificates by medical practitioners.

103. A medical practitioner who signs any certificate in or to the effect of the form set out in Part I of Schedule Two or in Schedule Three without having personally examined the person to whom it relates, at the time specified in such certificate, for the purpose of ascertaining the condition of such person or who wilfully makes any false statement in any such certificate shall be guilty of an offence against this Act.

Medical certificates, requests, etc., may be amended.

104. (1) Any medical certificate, request, recommendation, direction, order, or other document, by virtue of which any person has been admitted to an admission centre, mental hospital or authorised hospital, and which is incorrect or defective in any particular, may, with the approval of the Director, and within twenty-eight days after the admission of such person, be amended by the person who has signed the same; and such medical certificate, request, recommendation, direction, order, or other document as so amended shall thereupon be deemed to have and always to have had effect from its original date.

(2)

(2) If such medical certificate, request, recommendation, direction, order, or other document is not so amended, the Director may order the discharge of the person so admitted as aforesaid; or direct the superintendent of such admission centre, mental hospital or authorised hospital to obtain a new medical certificate, request, recommendation, direction, order or other document which shall have and be deemed always to have had effect for all purposes as if it had been obtained, made, and signed on the date on which the medical certificate, request, recommendation, direction, order or other document upon which such person was admitted to such admission centre, mental hospital or authorised hospital was obtained, made and signed.

Patients absent without leave.

105. Where a patient absents himself from any admission centre, mental hospital or authorised hospital otherwise than in accordance with the provisions of this Act the superintendent or any officer, servant or other person employed in such admission centre, mental hospital or authorised hospital, member of the police force or any other person authorised by the Director or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised may escort such patient and return him to such admission centre, mental hospital or authorised hospital.

Penalty on superintendents, officers, etc., ill-treating patients.

106. Any superintendent, officer, servant or other person employed in an admission centre, mental hospital or authorised hospital who strikes, wounds, ill-treats, or wilfully neglects any patient or voluntary patient shall for every such offence, be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any period not exceeding six months, or to both such penalty and imprisonment:

Provided that nothing in this section contained shall prejudice or affect any civil responsibility of the offender arising out of such offence.

107.

107. The powers, authorities, duties and functions conferred or imposed upon a superintendent of or an official visitor to an admission centre, mental hospital or authorised hospital by or under this Act shall be exercised and performed by him only in respect of that admission centre, mental hospital or authorised hospital and the patients and voluntary patients therein.

Powers of superintendents and official visitors exercisable in respect of places to which they are appointed.

108. (1) (a) This section shall apply to leucotomy and such other operations or medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

Conditions applicable to performance or giving of certain operations or medical treatment upon or to patients.

cf. Act No 45, 1898, s. 179A.

(2) No patient shall be subjected to any operation or medical or therapeutic treatment to which this section applies—

(a) by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless the Director has consented to the performance of such operation or the application of such treatment; or

(b) by any other medical practitioner or practitioners unless the Director has consented to the performance of such operation or the application of such treatment by such practitioner or practitioners.

(3)

(3) The Director shall not give such consent unless—

(a) he is satisfied upon the report of a superintendent that such operation or treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated, or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient; and

(b) in the case of leucotomy and any other operation or medical or therapeutic treatment in respect of which a Consultative Committee has been constituted as hereinafter provided the appropriate Consultative Committee has recommended the subjection of the patient to such operation or medical or therapeutic treatment.

(4) No patient shall be subjected to any operation or medical or therapeutic treatment referred to in paragraph (b) of subsection three of this section if the person, on whom notice has been served by the Director as hereinafter provided, has within the time prescribed expressed his disapproval of such operation or medical or therapeutic treatment.

Such notice shall state the name of the patient proposed to be subjected to any such operation or medical or therapeutic treatment, the nature of such operation or treatment, and the time within which disapproval may be expressed.

Such notice shall—

(a) where the patient is married and not separated by order of a court or by agreement from his spouse, be served on the spouse;

(b) where the patient is not married or is separated by order of a court or by agreement, be served on the parents or the surviving parent of such patient;

(c) where there is no person on whom notice is required to be served under the foregoing provisions of paragraphs (a) and (b) of this subsection, or the Director is unable to ascertain particulars of the

name

name and whereabouts of any person on whom notice is required to be so served, be served on such person as the Director considers to be the person in whose care, guardianship or custody the patient was prior to his admission to the admission centre, mental hospital or authorised hospital.

Where the Director has reason to believe that any disapproval expressed by any person in accordance with the foregoing provisions of this subsection has been unjustifiably or unreasonably expressed he may refer the matter to the Master for inquiry and determination. Any person who appears to the Master to be interested in the matter may be heard in person or by counsel at any such inquiry.

If the Master is of opinion that such disapproval has been expressed unjustifiably or unreasonably he may order that the patient be subjected to any such operation or medical or therapeutic treatment.

There shall be an appeal to the Full Court of the Supreme Court from any such order in such manner as may be prescribed by rules of Court.

(5) (a) There shall be constituted a Consultative Committee for the purposes of making recommendations to the Director relating to the subjection of patients to the operation of leucotomy.

(b) The Minister may in respect of any other operation or medical or therapeutic treatment to which the provisions of this section apply constitute a Consultative Committee for the purpose of making recommendations to the Director relating to the subjection of patients to such operation or medical or therapeutic treatment.

(c) Any Consultative Committee constituted pursuant to the provisions of this subsection shall consist of such medical practitioners and other persons as the Minister appoints.

(6) Where in the opinion of a superintendent the delay incurred in obtaining the consent of the Director to the performance or application of any operation or medical or therapeutic treatment to which this section applies would endanger the life of any patient such superintendent may—

(a) himself perform such operation or apply such treatment; or

(b) by writing under his hand consent to the performance of such operation upon or the application of such treatment to such patient by any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or by any other medical practitioner or practitioners named in such consent.

Where a superintendent performs any operation or applies any treatment or consents to such performance or application in accordance with the provisions of this subsection he shall forthwith report in writing to the Director the circumstances of the case.

(7) Any consent given by the Director or of a superintendent under this section shall, for the protection of any medical practitioner performing any operation or applying any treatment in accordance with such consent and of any person concerned with the performance of such operation or with the application of such treatment, have the same effect as if such consent had been given by the person operated upon or treated while he was not a mentally ill person or in the case of a minor, as if such consent had been given by his parents.

Certain operations or treatments may be performed or applied without consent of patients.

109. (1) (a) This section shall apply to electro convulsive therapy, electro narcosis therapy and insulin shock and such operations and medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b)

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2) A patient may be subjected to any operation or medical or therapeutic treatment to which this section applies by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or any other medical practitioner or practitioners notwithstanding that the patient or any other person legally entitled to consent to the operation or medical or therapeutic treatment of the patient has not consented thereto.

(3) No operation or medical or therapeutic treatment to which this section applies shall be performed on or applied to a patient unless the superintendent has determined that such operation or medical or therapeutic treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient.

Any such determination shall be expressed in writing.

110. (1) (a) Any proclamation under section one hundred and eight or one hundred and nine of this Act or subsection two of this section shall— Ancillary provisions to ss. 108 and 109.

(i) be published in the Gazette;

(ii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;

(iii)

(iii) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) The day so appointed shall not be earlier than the day next following—

(i) the fifteenth sitting day after such proclamation has been laid before both Houses of Parliament if notice of motion for the disallowance of such proclamation is not given in either House of Parliament within fifteen sitting days after such proclamation has been laid before such House; or

(ii) the day upon which a notice of motion for the disallowance of such proclamation duly given in either House of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days.

(c) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation such proclamation shall not take effect.

(2) Any proclamation under section one hundred and eight or one hundred and nine of this Act may be revoked by the Governor by proclamation.

(3) No action claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against Her Majesty, the Director or a superintendent or any member of a medical staff or medical practitioner referred to in sections one hundred and eight and one hundred and nine of this Act for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the enactment of those sections or the giving of any consent by the Director or a superintendent or as a result of any operation or treatment performed or applied in accordance with the provisions of those sections.

(4) In sections one hundred and eight and one hundred and nine of this Act "superintendent" in relation to an authorised hospital the holder of the license for which is not a medical practitioner means any medical practitioner visiting such authorised hospital pursuant to the provisions of section eleven of this Act.

Penalties.

111. (1) Any person guilty of an offence against this Act shall, except where otherwise expressly provided, be liable to a penalty not exceeding one hundred pounds.

(2) Any such penalty may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Regulations.

112. (1) The Governor may make regulations, not inconsistent with this Act, for and with respect to : —

(a) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act;

(b) prescribing the keeping and form of such books, records, registers or other documents or the furnishing of such reports or statistics as may be necessary or convenient for the administration of this Act;

(c) prescribing the duties, responsibilities, obligations and liabilities of superintendents and medical officers;

(d) all matters relating to correspondence by and with patients including the authorisation of the perusal and withholding of such correspondence;

(e) the general administration of admission centres and mental hospitals;

(f) all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

(2) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULES.

SCHEDULE ONE.

No. of Act.	Name of Act.	Extent of Repeal.
1898, No. 45	Lunacy Act of 1898	The whole.
1924, No. 10	Crimes (Amendment) Act, 1924	Section twenty-nine.
1934, No. 39	Lunacy (Amendment) Act, 1934	The whole.
1937, No. 37	Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937.	Section four.
1944, No. 19	Public Service (Amendment) Act, 1944.	Section three.
1944, No. 38	Lunacy (Amendment) Act, 1944	The whole.
1945, No. 33	Lunacy (Amendment) Act, 1945	The whole.
1946, No. 38	Lunacy (Amendment) Act, 1946	The whole.
1947, No. 41	Jury (Amendment) Act, 1947 ...	Subsection three of section eight.
1949, No. 43	Mental Institution Benefits Agreement Act, 1949.	Section three.
1952, No. 31	Lunacy (Amendment) Act, 1952 ...	The whole.
1955, No. 3	Lunacy (Amendment) Act, 1955 ...	The whole.

SCHEDULE TWO.

MENTAL HEALTH ACT, 1958.

MEDICAL CERTIFICATE.

Part I.

I, ..., of
(*name in full*)
..... (Medical Practitioner)
(*address*)
do hereby certify that on the ..... day of .....
19 , at .....
(*state place where examination took place*)
I personally examined .....
(*name of person in full*)
and I am of the opinion that the said person is a mentally ill person and is a suitable case for admission to the Admission Centre at ..... for observation and treatment.
(*name of Institution*)

* In my opinion the said person is:—

(a) suicidal
(b) dangerous to others
(c) unable to care for himself
(d) not under proper care and control.

* Strike out and initial any of the conditions that are not applicable.

The following treatment and medication (*if any*) has been administered in respect of the mental illness of the said ....., viz.

So far as I am aware—

(a) the bodily health and condition of the said .... is ..... and

(b) the said ..... * has / has not suffered any recent injury.

* Strike out words inapplicable.

If the said ..... has suffered recent injury the particulars of such injury are as follows:—

Made and signed this ..... day of ....., 19 .

Signature .....

Part II.

If the assistance of a member of the Police Force is required this Part of the Schedule should be completed.

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the said ..... to the Admission Centre at .....

Made and signed this ..... day of ..... 19 .

Signature .....

SCHEDULE

SCHEDULE THREE.

MENTAL HEALTH ACT, 1958.

I, the undersigned, being a medical practitioner, hereby certify that I, on the ..... day of ....., 19 , at *..... ..... separately from any other medical practitioner, personally examined .... of †....., whose occupation is ..... and that the said ..... is mentally ill and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:—

(1) Facts indicating mental illness observed by myself.

(2) Other facts (if any) indicating mental illness communicated to me by ‡

Dated at ..... this ..... day of ....., 19 .

Signature .....

Place of abode .....

* Insert name and address of place of examination.

† Insert residence.

‡ State full names and addresses of every communicant.

SCHEDULE FOUR.

MENTAL HEALTH ACT, 1958.

WHEREAS it has been duly certified under section ..... of the Mental Health Act, 1958, that ..... a prisoner in the ..... is mentally ill, I, the Minister for Health, exercising the powers conferred upon me under the said Act, hereby order that the said ..... be removed to the Mental Hospital at ..... to remain there until he is certified to be not mentally ill and dealt with in accordance with the said section.

Given under my hand the ..... day of ....., 19 .

.....

Minister for Health.

Sydney: V. C. N. Blight, Government Printer—1958

[6*s.* 3*d.*]

No. , 1958.

A BILL

To make provision with respect to the care, treatment and control of persons who are mentally ill and the management of their estates; to repeal the Lunacy Act of 1898 and certain other Acts; and for purposes connected therewith.

[MR. SHEAHAN;—5 *November*, 1958.]

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:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Mental Health Act, 1958". Short title and commencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows: —

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–8.

PART III.—ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 9–11.

PART IV.—ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 12–15.

PART V.—DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION—*ss.* 16–20.

PART VI.—VOLUNTARY PATIENTS—*ss.* 21–22.

PART VII.—MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES—*ss.* 23–33.

PART VIII.—WELFARE OFFICERS—*s.* 34.

PART IX.—OFFICIAL VISITORS—*ss.* 35–36.

PART X.—PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES—*ss.* 37–50.

PART XI.—MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS—*ss.* 51–99.

Division 1.—*General Powers and Duties of Master*—*ss.* 51–58.

Division 2.—*Powers and Duties of Master in Respect to Estates of Patients*—*ss.* 59–80.

Division 3.—*Management of Estates of Certain Persons not being Patients*—*ss.* 81–99.

PART XII.—SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES—*ss.* 100–101.

PART

PART XIII.—COURT VISITORS—*s.* 102.

PART XIV.—MISCELLANEOUS PROVISIONS—*ss.* 103–112.

SCHEDULES.

3. (1) The several Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) (a) The persons who immediately before the commencement of this Act held office as the Inspector-General of the Insane, Deputy Inspector-General and Deputy Master in Lunacy shall be deemed as from such commencement to have been appointed by the Governor as the Director, Deputy Director and Deputy Master in the Protective Jurisdiction of the Supreme Court, respectively.

(b) All persons who immediately before the commencement of this Act held office as superintendents, deputy superintendents, medical officers or otherwise under the Acts hereby repealed shall continue to hold office as such as from such commencement.

(c) All persons who immediately before the commencement of this Act held office as official visitors under the Acts hereby repealed shall be deemed to have been appointed as such under this Act:

Provided that any such official visitor who has at such commencement attained the age of seventy years shall upon such commencement be deemed to have vacated his office as such.

(d) All reception-houses appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be admission centres.

(e) All hospitals for the insane or for the criminal insane appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be mental hospitals.

(f)

(f) Any house for the reception of insane patients in respect of which a license granted under the Acts hereby repealed is in force at the commencement of this Act shall be deemed to be licensed as an authorised hospital until such license would have expired but for the provisions of this Act or is sooner revoked in like manner as a license for an authorised hospital may be revoked.

(g) All persons who immediately before the commencement of this Act were incapable persons, insane patients or patients, and insane persons within the meaning of the Acts hereby repealed shall respectively be deemed to be incapable persons, patients and protected persons within the meaning of this Act.

(h) The care, protection, administration and management of the estate of any person which immediately before the commencement of this Act was exercised by a committee of the estate of such person, a person appointed to undertake the care and management of such estate or the Master in Lunacy may continue to be exercised by such committee, person so appointed or the Master under and subject to the provisions of this Act.

(i) All rules of Court, regulations and proclamations made or deemed to have been made under the Acts hereby repealed and in force at the commencement of this Act shall, until varied or rescinded under this Act, continue in force and shall be deemed to have been made under this Act.

(j) All proceedings initiated, pending or part heard under the Acts hereby repealed at the commencement of this Act shall be continued as if such proceedings had been taken or initiated under this Act.

4. In this Act, unless the context or subject matter otherwise indicates or requires: — Interpretation.

"Admission centre" means a place appointed to be an admission centre under this Act.

"Authorised

"Authorised hospital" means a hospital in respect of which a license granted to any person under Part III of this Act is for the time being in force.

"Committee" means committee appointed under this Act.

"Continued treatment patient" means a patient in respect of whom an order has been made under section fourteen of this Act that he be reclassified as a continued treatment patient and be detained in an admission centre, mental hospital or authorised hospital.

"Court" means the Supreme Court in its Protective Jurisdiction.

"Director" means Director of State Psychiatric Services appointed under this Act.

"Incapable person" means any person who is proved to the satisfaction of the Court under section thirty-nine of this Act to be through mental infirmity, arising from disease or age, incapable of managing his affairs.

"Judge" means judge of the Court.

"Justice" means justice of the peace.

"Manager" means the person appointed under section thirty-nine of this Act to undertake the care and management of the property of an incapable person.

"Master" means Master in the Protective Jurisdiction of the Supreme Court.

"Mental hospital" means a place appointed to be a mental hospital under this Act.

"Mentally ill person" means a person who owing to mental illness requires care, treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs and "mentally ill" has a corresponding meaning.

"Patient" means any person admitted to and detained in any admission centre, mental hospital, or authorised hospital in accordance with the provisions of this Act and includes any person so admitted and detained while absent from such admission centre, mental hospital or authorised hospital either with or without leave of absence, but does not include a voluntary patient or, in Part V of this Act, except as provided in subsection three of section nineteen of this Act, a person detained in a mental hospital pursuant to Part VII of this Act.

"Prescribed" means prescribed by this Act or the regulations.

"Prison" means prison within the meaning of the Prisons Act, 1952.

"Protected person" means a person in respect of whom a declaration under section thirty-eight of this Act is in force.

"Regulations" means regulations made under this Act.

"Schedule" means Schedule to this Act.

"Stock" means any share or other interest in any company, society or association, and any fund, annuity or security transferable in books kept by any company, society or association, or transferable by deed alone, or by deed accompanied by other formalities, and any money payable for the discharge or redemption thereof, and any share or interest therein.

"Superintendent" means superintendent of any admission centre, mental hospital or authorised hospital.

"Tribunal" means a Mental Health Tribunal constituted under section thirteen of this Act.

"Voluntary patient" means any person who has been admitted to an admission centre, mental hospital or authorised hospital under section twenty-one of this Act.

"Welfare officer" means a person appointed as a welfare officer under section thirty-four of this Act.

References to certain words and expressions —how to be construed.

5. As from the commencement of this Act, in the construction, and for the purposes, of any Act, by-law, regulation, ordinance or any other instrument of the same or a different kind or nature, any reference to, or to be read, deemed and taken to refer to—

(a) any word or expression, within the meaning of the Acts hereby repealed, specified in the first column of the Schedule hereunder or to any like word or expression shall be read, deemed and taken to refer to the word or expression appropriate thereto specified in the second column of such Schedule unless the context or subject matter otherwise indicates or requires.

THE SCHEDULE.

First Column.	Second Column.
Insane, lunatic, insane patient, patient, incapable person, insane person, committee of the estate of an insane person, manager of the estate of an incapable person, Master in Lunacy, Lunacy Act of 1898, Inspector-General of the Insane, Deputy Inspector-General, Chief Clerk in Lunacy, Supreme Court in its Lunacy Jurisdiction, hospital for the insane, hospital for the criminal insane, reception house, licensed house.	Mentally ill, mentally ill person, patient, incapable person, protected person, committee of the estate of a protected person, manager of the estate of an incapable person, Master in the Protective Jurisdiction of the Supreme Court, Mental Health Act, 1958, Director, Deputy Director, Chief Clerk in the Protective Jurisdiction of the Supreme Court, Supreme Court in its Protective Jurisdiction, mental hospital, admission centre, authorised hospital.

(b) any of the provisions of the Acts hereby repealed shall be read, deemed and taken to refer to the corresponding provisions (if any) of this Act.

6. There shall be a Protective Jurisdiction of the Supreme Court. Protective Jurisdiction of Supreme Court.

The jurisdiction which immediately before the commencement of this Act was exercisable by the Supreme Court in its Lunacy Jurisdiction shall be exercised by the Supreme Court in its Protective Jurisdiction.

PART II.

ADMINISTRATION.

7. (1) The Governor may appoint a Director of State Psychiatric Services and a Deputy Director of State Psychiatric Services, who shall have and may exercise and perform all the powers, authorities, duties and functions of the Director during his absence for any cause whatsoever. Director of State Psychiatric Services.

(2) The Director shall from time to time visit and inspect every admission centre, mental hospital and authorised hospital with or without previous notice and at any time of the day or night as he thinks fit.

The Director may at any time make such inspections, investigations, and inquiries as he deems necessary, and shall make such inspections, investigations and inquiries as are directed by the Minister, with respect to the care, treatment or control of patients and voluntary patients or with respect to the management of any admission centre, mental hospital or authorised hospital.

(3) (a) The Director visiting any admission centre, mental hospital or authorised hospital may, by notice in writing, require any person to furnish him with such information as he requires concerning any of the matters with respect to which the Director is by this Act authorised to make inspections, investigations or inquiries or to attend and give evidence before him concerning any such matters, and to produce all books, documents or other papers whatever in such person's custody or under his control relating thereto.

(b)

(b) The Director may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he may administer an oath.

(c) Any person who without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Director or to answer truly and fully any questions put to him, or to produce any book, document or papers required of him by the Director, shall be guilty of an offence against this Act.

(4) (a) Any Director or Deputy Director who has any pecuniary interest, directly or indirectly, in any authorised hospital shall be deemed guilty of misconduct within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

(b) A Director or Deputy Director shall not sign any certificate or recommendation for the admission of any patient into or for the further observation and treatment of any patient in any admission centre, mental hospital or authorised hospital.

(5) The Director shall furnish to the Minister an annual report in writing as to the state and condition of the several admission centres, mental hospitals and authorised hospitals and as to the care of the patients and voluntary patients therein, and as to such other particulars as he thinks fit, and a true copy of such report shall forthwith be laid before Parliament if then in session, or if not then in session, within twenty-one sitting days after the commencement of the next session of Parliament.

Medical superintendents.

8. The Governor may appoint a medical superintendent for each admission centre and mental hospital and if he thinks fit a deputy medical superintendent therefor. No person shall be so appointed unless he is a medical practitioner.

A deputy medical superintendent shall have and may exercise and perform all the powers, authorities, duties and functions of the superintendent during his absence for any cause whatsoever.

PART

PART III.

ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Admission centres.

9. The Governor may, by notification in the Gazette, appoint any place to be a place for the admission and temporary treatment of mentally ill persons and every such place shall be an admission centre for mentally ill persons. Any such appointment may be revoked in like manner.

Mental hospitals.

10. The Governor may, by notification in the Gazette, appoint any place to be a mental hospital and in and by such notification may assign a name to such hospital. Any such appointment may be revoked in like manner.

Authorised hospitals.

11. (1) The Minister on the recommendation of the Director may, subject to the provisions hereinafter contained, by writing under his hand in or to the effect of the prescribed form grant to any person or to two or more persons jointly, a license to keep a hospital for the admission and treatment of a number of patients and voluntary patients not exceeding the number specified in such license.

Any such license shall be in force for a period of twelve months but may be renewed from time to time for a further period of twelve months.

(2) Applications for a license under this section shall be made to the Minister, shall be in or to the effect of the prescribed form and shall be accompanied by a plan of the premises in respect of which the license is desired.

(3) The Minister may, for good cause, revoke any such license. One month's notice in writing of the proposed revocation shall be given by the Minister to the holder of such license.

(4) If after the expiration of two months from the termination of a license, whether by effluxion of time or revocation thereof, there is in any authorised hospital in respect of which such license has so terminated any patient or voluntary patient, every person keeping such hospital shall be guilty of an offence against this Act.

(5) No person (unless he is a person who derives no profit therefrom, or a committee, or manager, or otherwise authorised under this Act) shall receive to board or lodge in any house, or take the care or charge of, any patient or voluntary patient.

(6) The holder of a license under this section shall where the authorised hospital in respect of which he holds such license—

(a) has more than one hundred patients and voluntary patients have at all times a medical practitioner resident therein;

(b) has more than fifty but not more than one hundred patients and voluntary patients cause a medical practitioner to attend such authorised hospital daily;

(c) has fifty or less patients and voluntary patients cause a medical practitioner to attend such authorised hospital at least twice a week, or where such number of patients and voluntary patients is less than ten and the Minister authorises the holder of the license to cause a medical practitioner to attend such authorised hospital at specified intervals less frequently than twice a week cause a medical practitioner to attend accordingly.

The medical practitioner resident in an authorised hospital pursuant to paragraph (a) of this subsection shall be the superintendent of such hospital. Where there is no medical practitioner resident in any authorised hospital the holder of the license for such hospital shall be the superintendent of such hospital.

(7) The superintendent of any authorised hospital shall cause to be kept such records and furnish to the Director such particulars as are prescribed in connection with the admission, treatment, discharge, removal, absence with or without leave or death of every patient and voluntary patient admitted to such authorised hospital.

(8)

(8) The holder of a license shall not make or cause to be made any additions or alterations to the authorised hospital for which he holds such license without the approval in writing of the Minister.

PART IV.

Admission to Admission Centres, Mental Hospitals and Authorised Hospitals.

Procedure for admitting persons to admission centres.

12. (1) A person may be admitted to and detained in an admission centre—

(a) upon the certificate of a medical practitioner who is of the opinion that such person is a mentally ill person;

(b) upon a written request to be so admitted and detained made by him to the superintendent of such admission centre;

(c) upon a written request for him to be so admitted and detained made to the superintendent of such admission centre by a relative or friend of such person;

(d) where he is taken to such admission centre by a member of the police force and a copy of an order, relating to such person, made by a justice under subsection two or three of this section is handed to the superintendent of such admission centre by such member of the police force;

(e) where he is taken to such admission centre by a member of the police force who in writing informs the superintendent of such admission centre that such

such member believes such person to be a mentally ill person and that such member found such person wandering at large or committing some offence against the law or in circumstances which reasonably led him to believe that such person was about to commit some offence against the law :

Provided that a person admitted to or detained in an admission centre pursuant to paragraph (b), (c), (d) or (e) of this subsection shall be examined by the superintendent or a medical officer attached to such admission centre as soon as practicable after his admission thereto and shall not be detained therein after such examination unless such superintendent or medical officer certifies that in his opinion such person is a mentally ill person.

(2) Where a person informs a justice on oath that—

(a) he believes any other person to be a mentally ill person, and

(b) such other person is without sufficient means of support, or is wandering at large, or has been discovered committing some offence against the law or in circumstances which may reasonably lead a person to suspect that such other person was about to commit some offence against the law,

such justice may by order under his hand require a member of the police force to apprehend such other person and to take him to the nearest convenient admission centre.

(3) A member of the police force or welfare officer shall, and any other person may, if he believes that a person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the care and charge of him, so inform a justice on oath. Such justice shall either himself visit and examine the person in respect of whom he has been informed as aforesaid and make inquiry into the case, or by order under his hand direct and authorise some medical practitioner to visit and examine such person and report in writing

writing to such justice his opinion as to the matters of which such justice has been informed as aforesaid. If upon such visit, examination and inquiry by such justice, or upon the report of such medical practitioner it appears to such justice that such person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the control of him, such justice may by order under his hand require any member of the police force to take such person to the nearest convenient admission centre.

(4) The superintendent of an admission centre shall as soon as practicable after the admission of a person to such admission centre cause such person to be examined by two medical practitioners separately and apart from each other.

If either of such two medical practitioners does not recommend that further observation and treatment of such person in a mental hospital is necessary the superintendent shall cause such person to be examined by another medical practitioner.

Where the superintendent is not a person who gave a certificate pursuant to the proviso to subsection one of this section in respect of such person, such superintendent may be one of the medical practitioners aforesaid.

A medical practitioner upon whose certificate or request a person has been admitted to an admission centre shall not make any examination of such person for the purposes of this subsection.

(5) If after examination as aforesaid two medical practitioners recommend that further observation and treatment of such person in a mental hospital or authorised hospital is not necessary, such person shall be discharged from such admission centre.

(6) If after examination as aforesaid two medical practitioners recommend that further observation and treatment in a mental hospital or authorised hospital is necessary, such superintendent shall cause such person to be brought as soon as conveniently may be before a stipendiary magistrate.

Such recommendation shall be in or to the effect of the prescribed form.

(7) Where a medical practitioner making any examination of any person as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon making any recommendation that further observation and treatment of such person is necessary as aforesaid disclose that fact and give particulars thereof in such recommendation.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(8) The superintendent shall give due notice to the nearest known relative or a friend of such person of his intention to have such person brought before a stipendiary magistrate.

(9) The stipendiary magistrate shall upon such person being brought before him hold an inquiry and if he is satisfied after consideration of the recommendations by the medical practitioners as aforesaid and such other evidence as may be placed before him, that such person is a mentally ill person, he shall—

(a) direct that such person be detained in an admission centre, or be admitted to and detained in a mental hospital or authorised hospital, to be specified in such direction for further observation and treatment as a temporary patient for such period not exceeding six months as may be specified therein; or

(b)

(b) order the discharge of such person to the care of any relative or friend who satisfies such stipendiary magistrate that such person will be properly taken care of.

Where pursuant to an inquiry as aforesaid such stipendiary magistrate is not satisfied that such person is a mentally ill person he shall order that such person be discharged from such admission centre.

Such stipendiary magistrate may suspend the execution of any such direction or order for any period not exceeding fourteen days, and may give such directions for the proper care and control of such person in the meantime as such stipendiary magistrate thinks fit.

Where any medical practitioner certifies in writing after examining such person that such person is not fit to be moved from the admission centre in which he is then detained, such person shall not be moved from such admission centre until the same or some other medical practitioner certifies in writing that such person is fit to be moved as aforesaid.

(10) Any certificate given by a medical practitioner for the purposes of paragraph (a) of subsection one of this section shall be in or to the effect of the form set out in Part I of Schedule Two.

Where a medical practitioner giving any certificate as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon giving that certificate disclose that fact and give particulars thereof in such certificate.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(11) Where a medical practitioner is of the opinion that the assistance of a member of the police force is desirable in conveying a person, in respect of whom such medical practitioner has signed any such certificate, to an admission centre he may endorse such certificate in or to the effect of Part II of the form set out in Schedule Two.

Any

Any member of the police force to whose notice any such endorsement is brought shall as soon as practicable convey or assist in conveying such person to an admission centre or cause or make arrangements for some other member of the police force to convey or assist in conveying such person to an admission centre.

(12) Any direction or order given by a stipendiary magistrate, and any order given by a justice, pursuant to any of the provisions of this section, shall be in or to the effect of the appropriate prescribed form and shall have effect according to its tenor.

Mental Health Tribunals.

13. For the purposes of this Part of this Act there shall be such number of Mental Health Tribunals as the Minister may constitute.

A Tribunal shall consist of :—

(a) a psychiatrist;

(b) a medical practitioner; and

(c) a barrister or solicitor.

Temporary patients to be brought before Tribunal.

14. (1) If at the expiration of six months from the date of his admission to an admission centre, mental hospital or authorised hospital a temporary patient is still detained in an admission centre, mental hospital or authorised hospital, the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment;

(b) whether such patient should be detained in an admission centre, mental hospital or authorised hospital for further observation and treatment as a temporary patient for such period not exceeding three months as the Tribunal shall specify in such determination; or

(c) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(2) Where a Tribunal has made a determination under paragraph (b) of subsection one of this section and the patient in respect of whom such determination has been made is at the expiration of the period specified in such determination still detained in an admission centre, mental hospital or authorised hospital the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment; or

(b) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(3) Any determination under this section shall be embodied in an order in the prescribed form and any such order shall have effect according to its tenor.

Medical reviews by superintendents.

15. It shall be the duty of the superintendent to medically examine or cause to be medically examined, at such intervals as may be prescribed, all continued treatment patients with a view to determining whether or not their continued detention in an admission centre, mental hospital or authorised hospital is necessary.

PART

PART V.

DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION.

Discharge of patients by superintendent.

16. The superintendent—

(a) may at any time, if in his opinion further observation and treatment of a patient is not required, discharge such patient;

(b) may discharge a patient pursuant to an application in that regard made by such patient or by any relative or friend of such patient, whether or not, in the case of an application made by a relative or friend of such patient, an undertaking in writing has been given to the superintendent by such relative or friend that such patient will be properly taken care of and will be prevented from injuring himself or other persons; and

(c) shall so discharge a patient where an order for the discharge of such patient has been made under this Act by the Tribunal, the Director, a judge, a stipendiary magistrate, or the official visitors.

Appeal against superintendent's refusal to discharge patient.

17. Where the superintendent has refused an application for the discharge of a patient as aforesaid, such patient, or relative or friend of such patient, making such application may, in the case of a temporary patient, if a period of three months has elapsed since the date of admission of such patient to an admission centre, mental hospital or authorised hospital, and in the case of a continued treatment patient, at any time, appeal against such refusal to the Director or any two or more official visitors.

The Director or official visitors to whom such appeal is made shall consider the circumstances of the case and the report on the case obtained from the superintendent (which report the superintendent shall give when required by the Director or any such official visitors) in which his reasons for refusing the application are stated, and may, if he or they think

think fit, order the discharge of such patient from the admission centre, mental hospital or authorised hospital, in which he is detained.

Judge may order discharge of patient.

18. Where a judge receives information upon oath, or has reason or cause to suspect that any person who is not a mentally ill person is detained in any admission centre, mental hospital or authorised hospital such judge may order the superintendent of such admission centre, mental hospital or authorised hospital to bring such person before him for examination at a time to be specified in such order, and if upon the examination of such person, and of such superintendent, and of any medical or other witnesses, it appears to such judge that such person is not a mentally ill person, such judge may order that such person be immediately discharged from such admission centre, mental hospital or authorised hospital.

Patient may be permitted to be absent in certain circumstances.

19. (1) The superintendent may allow a patient to be absent from an admission centre, mental hospital or authorised hospital for such period as the superintendent may think fit, or for such period and at such place and on such conditions as the superintendent may think fit for the benefit of the patient's health.

(2) Where any patient is so allowed to be absent and does not—

(a) at the expiration of such period return to the admission centre, mental hospital or authorised hospital from which he has been so allowed to be absent and a certificate of a medical practitioner certifying that the detention of such patient as a patient is no longer necessary is not received by the superintendent before the expiration of such period, or

(b) comply with any condition upon which he is so allowed to be absent,

such patient may at any time after the expiration of such period or non-compliance with any such condition, as the case may be, be apprehended by a member of the police force and returned to such admission centre, mental hospital or authorised hospital.

(3)

(3) In this section "patient" includes a person detained in a mental hospital pursuant to section thirty-two of this Act.

Transfer of patients.

20. The Director may by order in writing direct the transfer of a patient from the admission centre, mental hospital or authorised hospital in which he is detained to an admission centre, mental hospital or authorised hospital. Any such order for transfer shall be a sufficient authority for the transfer of such patient and for his being received into and detained in the admission centre, mental hospital or authorised hospital to which he is ordered to be transferred.

PART VI.

VOLUNTARY PATIENTS.

Voluntary patients.

21. (1) A person may be admitted to and detained in an admission centre, mental hospital or authorised hospital as a voluntary patient—

(a) where such person is of or above the age of twenty-one years, upon an application in that behalf made by him;

(b) where such person is under the age of twenty-one years, upon an application in that behalf made by the person in whose care and custody he may be.

Such application shall be in writing and be made to the superintendent of such admission centre, mental hospital or authorised hospital.

(2) A superintendent shall, subject to the provisions of this section, discharge a voluntary patient within seven days after an application in writing for his discharge has been made to such superintendent—

(a) where such voluntary patient is of or above the age of twenty-one years, by such voluntary patient or some person on his behalf;

(b)

(b) where such voluntary patient is under the age of twenty-one years, by the person upon whose application he was admitted to and detained in an admission centre, mental hospital or authorised hospital pursuant to subsection one of this section.

(3) No person shall be admitted to an admission centre, mental hospital or authorised hospital under this section unless the superintendent is satisfied that such person is likely to be benefited by his being so admitted for care and treatment as a voluntary patient.

(4) A superintendent may—

(a) grant leave of absence to any voluntary patient;

(b) discharge any voluntary patient;

(c) if the condition of the voluntary patient so requires cause such action to be taken as may be necessary to have such voluntary patient admitted to and detained in an admission centre as a temporary patient.

Master may take charge of estates of voluntary patients in certain circumstances.

22. (1) The Master may take charge of the estate of a voluntary patient—

(a) who is of or above the age of twenty-one years, if he is requested so to do by such voluntary patient;

(b) who is under the age of twenty-one years, if he is requested so to do by the person on whose application such voluntary patient was, pursuant to subsection one of section twenty-one of this Act, admitted to and detained in an admission centre, mental hospital or authorised hospital.

(2) Where, pursuant to this section, the Master takes charge of the estate of a voluntary patient, he shall have in respect thereof all the powers, authorities, duties and functions which he has under Part XI of this Act in respect of the estate of a patient.

PART

PART VII.

MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES.

Procedure where persons charged with offences are found to be mentally ill by a jury or acquitted on the ground of being mentally ill.

cf. Act No. 45, 1898, s. 65.

23. (1) If any person indicted for any offence is mentally ill and, upon arraignment, is found to be so by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person is found by the jury, before whom he is tried, to be mentally ill, the judge before whom any such person is brought to be arraigned or tried as aforesaid may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody in such place and in such manner as to such judge may seem fit until he is dealt with as provided by section twenty-four of this Act.

(2) In all cases where it is given in evidence upon the trial of any person charged with any treason, felony or misdemeanour that such person was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill, and such person is acquitted, the jury shall be required to find specially whether such person was at such time mentally ill and to declare whether such person was acquitted by them on the ground that he was at such time mentally ill.

In this subsection "mentally ill" means, in relation to any person charged as aforesaid, so insane as not to be responsible, according to law, for the act or omission the subject of the charge.

(3) If the jury find that such person was at the time the act or omission the subject of the charge was done or omitted to be done mentally ill as aforesaid, the judge before whom such trial is had shall order such person to be kept in strict custody, in such place and in such manner as to such judge seems fit until the Governor's pleasure is known, and thereupon the Governor may give such order for the safe custody of such person during the Governor's pleasure in a prison as the Governor deems fit.

(4)

(4) Upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, the Governor, by warrant under his hand, may direct that such person be conveyed to and detained in a mental hospital during the Governor's pleasure.

Persons found to be mentally ill before trial to be sent to mental hospital.

cf. Act No. 45, 1898, s. 66.

24. (1) When any person committed to take his trial for any offence is certified by two medical practitioners to be mentally ill, such certificates to be in or to the effect of the form of Schedule Three, or is upon arraignment found by verdict to be mentally ill, the Minister may direct, by order under his hand in or to the effect of the form of Schedule Four, that such person be removed to, and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall order his removal to a prison in order to be tried for such offence or if he is not to be so tried order that he be discharged.

(2) Such detention for any period shall not operate as a bar to his subsequent indictment and trial for such offence.

Procedure in reference to certain persons under detention appearing to be mentally ill.

cf. *Ibid.* s. 67.

25. If any person while detained in any prison for debt, or in any prison, or other place of confinement, in consequence of any summary conviction or order by any justice or in default of bail, appears to be mentally ill, the Minister may, upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct, by order under his hand, that such person be removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall, if such person remains subject to be continued in custody, order his removal to the prison or other place from where he was taken, or to some other prison or place of confinement, or if such person does not remain subject to be continued in custody order that he be discharged.

26. (1) In any case in which a person charged with an offence for which he has not been tried (in this section referred to as "the person charged") is detained in a mental hospital the Attorney-General, if he is of opinion that the question whether the person charged is fit to plead if put upon his trial should be determined by a jury, may by order under his hand direct that the person charged be removed from such mental hospital to some prison appointed by the Attorney-General and specified in the order.

Order by Attorney-General for trial of issue whether patient fit to plead if placed upon trial.

cf. Act No. 45, 1898, s. 67A.

(2) Such order shall be a sufficient warrant for the removal of the person charged from the hospital in which he is detained and for his detention in the prison appointed by the Attorney-General and specified in the order.

(3) The Attorney-General may further order that a jury of twelve persons be empanelled for trial of an issue whether the person charged is fit to plead if placed upon his trial.

(4) The said issue shall be tried at a time and place appointed by the Attorney-General before a judge of the Supreme Court or a chairman of Quarter Sessions.

(5) The governor of the prison in which the person charged is detained shall procure the attendance of the person charged at the time and place appointed for the trial of the said issue.

(6) At the request of the Clerk of the Peace the Sheriff shall summon thirty-six persons, chosen by him from the list of jurors in the jurors' list for the jurors' district within which the place appointed for the trial of the said issue is situated, to attend at the time and place appointed for the trial of the said issue.

(7) A jury of twelve persons shall be empanelled from the jurors in attendance at the court and the said issue shall be tried in accordance with the procedure adopted at a criminal trial where upon the trial of an indictment a question is raised whether the accused is fit to plead. The judge presiding at the trial shall have power to make any order including a power of postponement and give any directions which

which in his opinion are necessary for the trial of the issue. The jurors empanelled to try the issue shall be sworn in such manner as the court shall direct.

(8) If the jury find that the person charged is not fit to plead he shall be returned to the hospital from which he was removed.

(9) If the jury find that the person charged is fit to plead he shall be returned to prison.

(10) If a bill is found against him he shall be placed upon his trial.

(11) If a bill is not found against him a certificate shall be issued by the Attorney-General to the judges of the Supreme Court in accordance with the provisions of section three hundred and fifty-eight of the Crimes Act, 1900, as amended by subsequent Acts, and any of the said judges may thereupon direct the gaoler in whose custody the person charged may be to discharge him from custody.

(12) At the trial of the said issue the person charged shall be entitled to give evidence on oath or to make an unsworn statement.

(13) If the jury find that the person charged is fit to plead and he is placed upon his trial he shall be entitled to set up the defence that he was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill.

In this subsection "mentally ill" has the meaning ascribed thereto in subsection two of section twenty-three of this Act.

Procedure on certain prisoners appearing to be mentally ill.

cf. Act No. 45, 1898, s. 68.

27. If any person while imprisoned in any prison, under any sentence of hard labour or imprisonment imposed otherwise than on the conviction or order of justices appears to be mentally ill the Minister may upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct by order under his hand in or to the effect of the form of Schedule Four, that such person be removed

removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall if such person remains subject to be continued in custody, order his removal to the prison from where he was taken, or to some other prison, or if such person does not remain subject to be continued in custody order that he be discharged.

Procedure on prisoners under sentence of death appearing to be mentally ill. cf. Act No. 45, 1898, s. 69.

28. If it is made to appear to the Minister by any means whatsoever that there is good reason to believe that any prisoner in confinement under sentence of death is then mentally ill, the Minister may appoint two or more medical practitioners to inquire into the mental health of such prisoner, and if on such inquiry such prisoner is found to be then mentally ill, the fact shall be certified in writing by such practitioners to the Minister, and on receipt of such certificate the Minister may, by order under his hand, direct that such prisoner be removed to and detained in a mental hospital until such prisoner is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall order that such person be removed to any prison or other place of confinement to undergo his sentence of death or to be dealt with according to law, as if no such order for his removal to and detention in a mental hospital had been made.

Governor may liberate on conditions. cf. *Ibid.* s. 72.

29. When any person is ordered to be kept in custody during the Governor's pleasure, any order made by the Governor in relation to the custody of such person may be renewed and varied from time to time or revoked; and the Governor may permit any such person or any person conveyed to and detained in a mental hospital pursuant to a direction by the Governor, not being a person under conviction and sentence, to be liberated from custody or such mental hospital, upon such terms and conditions as the Governor may think fit; and if any such term or condition is broken, such person may be retaken and dealt with as provided in section thirty of this Act.

30.

Escaped mentally ill persons detained under this Part may be recaptured. cf. Act No. 45, 1898, s. 73.

30. In case of the escape of any person detained in a mental hospital pursuant to the provisions of this Part of this Act he may be retaken at any time by the superintendent, or any officer, servant or other person employed therein, or any member of the police force, or any other person authorised by the Minister or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised and shall be conveyed and admitted to and detained in such hospital.

Penalties for assisting or permitting escape. cf. *Ibid.* s. 74.

31. Any person who rescues any person being conveyed to or detained in any mental hospital pursuant to the provisions of this Part of this Act, and the superintendent or any officer, servant, or other person employed in any such hospital who, through wilful neglect or connivance, permits any person so detained therein pursuant to the provisions of this Part of this Act to escape therefrom, or conceals or abets or connives at any such escape, or who carelessly allows any such person to escape therefrom, shall be guilty of an offence against this Act and shall be liable to imprisonment for a period not exceeding three years or a penalty not exceeding five hundred pounds or both such imprisonment and penalty.

Persons attempting to commit suicide and mentally ill not triable for the offence. cf. *Ibid.* s. 75.

32. Any person committed to take his trial for having attempted to commit suicide who is certified by two medical practitioners in or to the effect of the form of Schedule Three to be mentally ill shall forthwith be sent to and detained in a mental hospital and such person, when certified by the superintendent and Director, or by the superintendent and an official visitor, to be not mentally ill, shall be discharged from such hospital, and shall not be put upon his trial or be liable to any charge or indictment for having attempted such act of suicide.

Security conditions for persons detained in mental hospitals under this Part.

33. (1) Any person detained in a mental hospital pursuant to the provisions of this Part of this Act shall be subject to such security conditions as the Director may deem necessary.

(2)

(2) The Director may by order in writing direct the transfer of a person detained in a mental hospital pursuant to this Part of this Act to any other mental hospital. Any such order for transfer shall be a sufficient authority for the transfer of such person and for his being admitted to and detained in the mental hospital to which he is ordered to be transferred.

PART VIII.

Welfare Officers.

Appointment and duties of welfare officers.

34. (1) For the purposes of this Act the Governor may appoint such welfare officers as he deems necessary.

(2) The powers, authorities, duties and functions of a welfare officer shall be:—

(a) on the direction of a superintendent to escort and convey or assist in escorting and conveying a patient to a mental hospital, where such patient has been granted leave of absence from such mental hospital and such patient's return is desirable on account of a breakdown in his mental health;

(b) to escort and convey or assist in escorting and conveying patients from a mental hospital to another mental hospital or to a public hospital;

(c) to visit patients, who are on leave of absence from mental hospitals, or their relatives or friends for the purpose of advising them on matters pertaining to the welfare of such patients;

(d) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon him by or under this Act or as may be assigned to him by the Director.

PART

PART IX.

OFFICIAL VISITORS.

Appointment of official visitors.

35. (1) The Governor may appoint for every admission centre, mental hospital or authorised hospital, two or more official visitors, one of whom shall be a medical practitioner and one a stipendiary magistrate, barrister-at-law, or solicitor.

(2) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of an official visitor and such official visitor shall not in his capacity as such be subject to the provisions of any such Act.

(3) No person of or above the age of seventy years shall be appointed as an official visitor. An official visitor shall cease to hold office as such on the day upon which he attains the age of seventy years.

(4) Any two or more official visitors, one being a medical practitioner, shall visit the place for which they are appointed official visitors once at least every month with or without any previous notice, and at such hours of the day or night, and for such length of time as they think fit, and also at such other times as the Minister may direct.

(5) Any person who has any pecuniary interest, directly or indirectly, in an authorised hospital shall not be or act as an official visitor for any authorised hospital and no official visitor shall sign any certificate or request for the admission of any person to, or attend professionally upon, any patient in any admission centre, mental hospital or authorised hospital.

(6) Such official visitors, when visiting such admission centre, mental hospital or authorised hospital, shall, so far as practicable, inspect every part of the same and make such inquiries as they may deem necessary as to the care, treatment and control of the persons detained therein.

Duties of superintendents on visits by official visitors.

36. (1) The superintendent shall allow the official visitors visiting an admission centre, mental hospital or authorised hospital to have access to and inspect every part thereof and shall permit them to see and interview every person detained therein

therein, and shall give full and true answers to the best of his knowledge to all questions which the official visitors may ask in reference to the said admission centre, mental hospital or authorised hospital, and the persons detained therein, and shall produce to the official visitors such registers, books, records, orders, certificates, papers and other documents relating to the admission and discharge, care, treatment and control of persons detained therein, and furnish all such returns relating to any of the matters aforesaid, as may be required by such official visitors.

(2) The official visitors shall—

(a) examine and sign all registers, books and records produced to them in accordance with the foregoing provisions;

(b) on every visit to an admission centre, mental hospital or authorised hospital enter in the official visitors' book the fact of their visit with such observations as they think fit; and

(c) transmit to the Minister as soon as practicable after each such visit a report upon their visit containing such information as they deem necessary.

PART X.

Protected and Incapable Persons and Committees and Managers of Their Estates.

Constitution of Court. Act No. 45, 1898, s. 101.

37. The Court shall, except on appeal as hereinafter provided, be holden by the Chief Judge or a judge in Equity, or by any other judge sitting for the Chief Judge in Equity during his absence from Sydney or illness or at his request:

Provided that any such judge may sit in chambers to determine all such matters as in his opinion may advantageously and with propriety be heard in chambers; and such judge when so sitting shall have the same powers and jurisdiction as in open court.

38.

Declarations of Court as to persons being mentally ill.
cf. Act No. 45, 1898, s. 102.

38. Where it is proved to the satisfaction of the Court that a person is mentally ill and incapable of managing his affairs, the Court may make a declaration to that effect, and may direct a reference to the Master to make inquiries concerning the property of such person, and may make all proper orders for rendering the property of such person, or the income thereof available for the payment of his debts and for the maintenance or benefit of himself and his family, and for carrying on his trade or business (if any), and may, if necessary, appoint, either with or without security, a committee of his estate, and also when desirable appoint a committee of his person.

Persons incapable of managing their affairs.
cf. *Ibid.* s. 103.

39. (1) Where it is proved to the satisfaction of the Court that any person is, through mental infirmity, arising from disease or age, incapable of managing his affairs, the Court may make all proper orders for rendering the property and income of the said person available for the payment of his debts and for the maintenance and benefit of himself and his family; and may make orders for the care and management of his property in all respects as if he were a protected person; and may, if necessary, appoint a manager, either with or without security, to undertake the care and management of his property under the order and direction of the Court.

(2) The manager shall, subject to the said orders and directions and to the rules of Court, have the same powers and be subject to the same obligations and control as a committee, appointed under section thirty-eight of this Act, of the estate of a protected person, and the powers and provisions contained in this Act relating to the management and administration of the estates of protected persons shall apply to the estates of incapable persons.

Superseding orders, etc. when person has recovered.
cf. *Ibid.* s. 104.

40. Where it is proved to the satisfaction of the Court that any protected person or incapable person has recovered his mental health and is capable of managing his affairs, the Court may make a declaration to that effect, and may make all proper orders to give effect to such declaration, and to release the property of such person from the control of the Court

Court or the manager, as the case may be, and to discharge the committee of his estate and the committee (if any) of his person or the manager, as the case may be.

Mode of application. cf. Act No. 45, 1898, s. 105.

41. Applications under sections thirty-eight, thirty-nine and forty of this Act shall be made, and evidence by affidavit given in support thereof, in such manner as is prescribed by rules of Court:

Provided that every deponent may be cross-examined upon his affidavit either at the hearing or at such time and place as the Court may direct, and at such hearing the Court may receive or require the oral evidence of witnesses and such other proofs as may be deemed necessary.

Service of process. cf. *Ibid.* s. 106.

42. Notice of any applications under sections thirty-eight, thirty-nine and forty of this Act and of the evidence by affidavit to be given in support thereof shall be given to such persons, in such manner and within such time as may be prescribed by rules of Court.

Court may order inquiry before a jury. cf. *Ibid.* s. 107.

43. The Court in any case, instead of determining whether or not the person whose mental health is the subject of inquiry is mentally ill and incapable of managing his affairs, or is through mental infirmity, arising from disease or age, incapable of managing his affairs, may order that question to be determined by a jury; and thereupon the like proceedings for procuring the return of such jury shall be had and taken as provided by any law for the time being in force for the return of juries in the Supreme Court, and in every proceeding before a jury pursuant to this section the number of the jury shall be four, unless the Court order a jury of twelve.

Inquiries before jury. cf. *Ibid.* s. 108.

44. Where any such inquiry before a jury is ordered, the Court shall direct the question to be tried before a judge or the Master, or a commissioner specially appointed, who shall while so acting have for the purpose of the inquiry all the powers of the Supreme Court; and the trial of every such question and the verdict thereon shall be had and dealt with in all respects in accordance with any law for the time being in force relating to the trial of issues out of the Supreme Court.

After verdict Court may make declarations and orders.

45. When the verdict of the jury has been returned, unless a new trial is granted, the Court may make such declaration and orders as mentioned in sections thirty-eight and thirty-nine of this Act, as the case may require.

cf. Act No. 45, 1898, s. 109.

Examination of person whose mental health is in question.

46. On the hearing of any application under section thirty-eight or thirty-nine of this Act the person whose mental health is in question shall be examined by the Court; and on the trial of any such question as abovementioned there shall be a like examination by the jury before they consult as to their verdict, and every such examination shall take place in open court or in private, as may be deemed expedient:

cf. *Ibid.* s. 110.

Provided that, if it appears to the Court to be unnecessary or inexpedient that such person should be examined by the Court, or the jury, the Court may, in lieu of the examination aforesaid, direct the Master to personally examine the said person and report on such examination, or may dispense with any examination whatever.

Construction of references to commission of Lunacy and certain like expressions.

47. Where in any Act or rule of Court or instrument, reference is made to a commission of Lunacy, or a writ in the nature of a writ de lunatico inquirendo, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission, the application and declaration or orders thereon in sections thirty-eight and forty of this Act mentioned, as the case may require, shall be taken to be intended by or comprehended in such reference.

cf. *Ibid.* s. 111.

Persons found mentally ill in places outside N.S.W.

48. When the Court is satisfied that any person has been found mentally ill and incapable of managing either himself or his affairs or both by any commission de lunatico inquirendo, or other legal inquiry in any part of the British Commonwealth of Nations outside New South Wales or in any other country to which the Governor by proclamation published in the Gazette extends the provisions of this section, the Court may direct a copy of the inquisition or finding on such commission or inquiry, duly certified by the proper officer of the Court or other authority into which such inquisition or finding has been returned

cf. *Ibid.* s. 112.

returned, to be filed of record in the Court; and may thereupon appoint a committee of such person's estate or person, or both, and may give such other orders in respect of the management of his estate or person as it deems fit; and such committee shall have the same duties, powers, and liabilities as if he were the committee of the estate or person of a protected person.

Court may order costs. cf. Act No. 45, 1898, s. 113.

49. The Court may make such order as to the costs, charges, and expenses of and incidental to any proceeding authorised by this Act as the Court thinks proper, and every such order shall have the same effect as orders for the payment of money made by the Supreme Court in its equitable jurisdiction.

Appeal. cf. *Ibid.* s 114.

50. (1) There shall be an appeal to the Full Court of the Supreme Court from every order or decision made under this Act before or by a single judge in such manner as may be prescribed by rules of Court.

(2) Every person so appealing shall within fourteen days from the time of filing such appeal, either—

(a) deposit with the Master such sum, not exceeding one hundred pounds, as the Master directs; or

(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.

(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.

(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.

PART

PART XI.

MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS.

Division 1.—*General Powers and Duties of Master.*

Master in Protective Jurisdiction of Supreme Court.

51. There shall be a Master in the Protective Jurisdiction of the Supreme Court, who shall be the person for the time being holding the office of Master in Equity.

cf. Act No. 45, 1898, s. 115.

The Governor may appoint a Deputy Master. The Deputy Master may exercise all the powers conferred and shall perform all the duties imposed upon the Master by any Act or by any rule or order of the Court. During the illness or absence of the Deputy Master, the Court or the Chief Judge or a judge in Equity may authorise the Chief Clerk in the Protective Jurisdiction of the Supreme Court to exercise all the powers conferred and perform all the duties imposed upon the Master.

Administration of estates of certain persons.

cf. *Ibid.* s. 116.

52. (1) Subject to rules of Court, the jurisdiction and powers of the Court in respect of the administration and management of the estates of all protected persons and incapable persons may be exercised by the Master; and every order made by the Master under the authority hereby conferred on him shall take effect, unless rescinded or varied by the Court; and the Master shall have and execute all the powers and duties hereby or under the authority hereof vested in and imposed upon him; and subject to and in accordance with the regulations and the rules of Court and to any special order of the Court, the Master shall undertake the general care, protection, and management, or supervision of the management, of the estates of all patients, protected persons and incapable persons; and he shall supervise and enforce the performance of the obligations and duties of all committees under this Act, and shall take care of, collect and administer, under the provisions of this Act, the property and estates of all patients.

(2)

(2) The Master may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stockbroker or any other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate of any patient, protected person or incapable person.

(3) The Master shall not be responsible for the default of any such agent if employed in good faith.

Expenses incurred to be paid out of estate.
cf. Act No. 45, 1898, ss. 117, 118.

53. All expenses incurred by or on behalf of the Crown, in the care, protection, and management, or in the supervision of the management, under this Act, of the estate of any patient, protected person or incapable person, may be charged by the Master against and shall be paid out of and recoverable from such estate or may be paid by the Master out of any money of such patient, protected person or incapable person that comes to his hands, or may be recovered by him on summary application to the Court, whether or not such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Percentages.
cf. *Ibid.* s. 119.

54. There shall be paid to the Master a percentage at such rate not exceeding five pounds per centum per annum as may be fixed by rule of Court on the clear annual income of every patient, protected person and incapable person; and the said percentage shall be charged upon and payable out of the estate of such patient, protected person or incapable person whether or not, before payment, such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Master to have all necessary powers of inquiry, taking evidence, etc.
cf. *Ibid.* s. 120.

55. (1) The Master may in the execution or performance of his powers, authorities, duties and functions, and also in the prosecution of all inquiries and matters which may be referred to him under this Act, summon persons before him and administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit, and take recognizances and require the production of books, papers, accounts,

accounts, and documents; and every person so summoned shall be bound to attend as required by the summons and give evidence before the Master in like manner as persons summoned before him in his equity jurisdiction are bound to attend and to give evidence; and the Court may by any order (general or particular) refer to the Master any inquiries under the provisions of this Act relating to the person and estate of any person.

(2) Every person who does not appear pursuant to such summons (having had his reasonable expenses paid or tendered to him at the time of service of such summons), or does not assign some reasonable excuse for not so appearing, or appears and refuses to be sworn or examined shall, for every such neglect or refusal, be liable to a penalty not exceeding ten pounds.

Witnesses may be cross-examined orally. cf. Act No. 45, 1898, s. 121.

56. Every person giving evidence by affidavit shall be liable to oral cross-examination by or before the Master upon his affidavit, and after cross-examination may be re-examined orally by or on behalf of the person filing the affidavit; and every person giving evidence by affidavit shall be bound to attend before the Master to be so cross-examined and re-examined upon receiving due and proper notice and payment or tender of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena ad testificandum before the Master; and the expenses attending on such cross-examination and re-examination shall be paid in such manner and by such person as the Master directs.

Master may issue advertisements. cf. *Ibid.* s. 122.

57. The Master may cause to be issued such advertisements as may to him seem expedient with reference to the subject matter of a proposed inquiry or with a view to the efficient discharge of his duties as Master under this Act with regard to the estate and property of any person.

Master to approve of and to enforce security to be given by committee of estate. cf. *Ibid.* s. 123.

58. The Master shall approve on behalf of Her Majesty of the security to be given by the committee of the estate of any person under order of the Court pursuant to this Act, and it shall be the duty of the Master to see that the conditions of all bonds and recognizances heretofore or hereafter to be given or entered into by the committee of the estate

estate or other persons in the matter of the estate shall be faithfully and regularly observed and performed, and immediately to report to a judge any breach or non-performance of any of such conditions; and thereupon such judge may cause such bond or recognizance to be forfeited or estreated, and such forfeiture or estreat shall be enforced and effected in the manner provided by any law now or hereafter to be in force relating to the estreat of recognizances entered into to Her Majesty.

Division 2.—Powers and Duties of Master in Respect to Estates of Patients.

Powers of Master in respect of estates of patients.

cf. Act No. 45, 1898, s. 124.

59. The Master shall have in respect of the property and estate of any patient, in addition to the general powers conferred upon him in Division 1 of this Part of this Act, all the like powers and authorities, subject to the like limitations, as are hereinafter, in Division 3 of this Part of this Act, given to the committee of the estate of a person, and also the powers hereinafter mentioned.

Power to apply property of certain acquitted persons for their benefit.

cf. *Ibid.* s. 125.

60. Where any person has on the trial of any information been acquitted as referred to in subsection two of section twenty-three of this Act or has upon arraignment upon a criminal charge been found to be mentally ill, the Sheriff shall report the fact to the Master, who shall thereupon make inquiry respecting the property of such person, and the Court may, on being satisfied that such person is still a mentally ill person and is still in confinement, make any orders with respect to the property of such person 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.

Master's powers as to property of patients.

cf. *Ibid.* s. 126.

61. The Master shall have the management and care of the property of every patient, and in addition to other powers and duties necessary and incident to such management and

care,

care, may exercise the following powers and perform the following duties with respect to the estate of every patient, that is to say, he may :—

(a) receive moneys, rents, incomes, and profits of real and personal property;

(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 one thousand 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, suits, and other proceedings on behalf of the patient;

(j) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

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

cf. Act No. 45. 1898, s. 127.

62. (1) The Master may apply to the Court in such manner as may be prescribed by rules of Court, for directions with respect to the exercise of any of the powers over the estate of a patient which the Court may exercise, or order a committee to exercise, over the estate of any person, under Division 3 of this Part of this Act.

(2) The Court 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.

Master may execute instruments on behalf of patient.

cf. *Ibid.* s. 128.

63. (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 not mentally ill, and may, in the name and on behalf of the patient, execute and sign deeds, instruments, transfers of shares, receipts, releases, and other documents, which shall be as effectual as if executed and signed by the patient himself while not mentally ill, 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 is a patient or not.

(2) 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 is 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.

Summary proceedings for protection of property of patients.

cf. *Ibid.* s. 129.

64. (1) If any real or personal property of a patient is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient by any person, the Master may as such Master claim and recover possession of such property or damages for the conversion or injury thereof,

thereof, or payment of the said sum by summary proceeding on complaint before a judge who is hereby authorised and required on proof to his satisfaction of the said cause of complaint to make an order requiring the defendant to give up possession of such property, or to pay reasonable damages to be fixed by the said order for the conversion or injury thereof, or to pay the sum so due as aforesaid, and in default of compliance by the defendant with the said order, to order in and by the same or any subsequent order that the defendant be committed to prison for any period not exceeding six months.

(2) Such judge may in any complaint under this section make such order as to costs as he thinks fit, and every order under this section shall have the same effect, and may be enforced in like manner as any judgment, decree, or order of the Supreme Court in its jurisdiction at law or in equity.

Payments to consolidated revenue.

cf. Act No. 45, 1898, s. 130.

65. (1) 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 may from time to time appoint, all money paid to him for the maintenance of any patient, and all percentages.

(2) 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.

(3) A separate current 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.

cf. *Ibid.* s. 131.

66. The Master may apply moneys standing to the credit of the current account of a patient in 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)

(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 not a mentally ill person;

(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 taking up of the rights to issues of new shares to which a patient becomes entitled by virtue of his existing shareholdings;

(g) the investment, in manner hereinafter provided, of money not presently required for the above purposes;

(h) the payment to a patient or any person in accordance with the provisions of section seventy-one or seventy-three of this Act:

Provided that the Master may report to and apply for the advice and directions of the Court upon any of the matters aforesaid; and the Court 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 to be made, and notices given as may be deemed advisable, and may make such orders in the premises as may be thought proper.

Investment on purchase of land. cf. Act No. 45, 1898, s. 133.

67. The Master may, with the leave of the Court, to be obtained in such manner as is or may from time to time be prescribed by rules of Court, invest any money unapplied as aforesaid in the purchase of land, if such purchase appear to the Court to be desirable for the purpose of protecting the estate of the patient from injury or deterioration in value, of increasing the value or facilitating the sale of other lands of the estate, or of providing a home for the patient or his dependants; and the Court may, on the hearing of the application, deal with the same ex parte, or require notice to be served on any person.

68.

Common fund.

cf. Act No. 19, 1913, s. 36A.

68. (1) Subject to this Act balances to the credit of all current accounts in the trust fund at the commencement of this Act and at any time thereafter shall be one common fund and shall be available for investment as provided in this Act.

(2) Interest received from investments from the common fund shall be credited to an account styled "Interest Account" and shall be allocated therefrom as provided in this section.

The costs and expenses of such allocation shall be a charge on the common fund.

(3) Interest shall be allowed on all balances forming part of the common fund, and shall be credited at such rate or rates and at such time or times as the Master may determine.

Investment of common fund and moneys unapplied under s. 66.

cf. *Ibid.* s. 36D.

69. Moneys unapplied as aforesaid and moneys in the common fund may be invested—

(a) in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts; or

(b) on deposit with the Colonial Treasurer for a period or periods not exceeding twelve months in any one case, which deposit shall bear interest at the prescribed rate and any such deposit may be renewed from time to time for a like period and subject to the like conditions.

Withdrawal from the common fund.

cf. *Ibid.* s. 36E.

70. (1) The Master may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund and standing to the credit of the current account of any patient for any purpose of or relating to the exercise and discharge by the Master of his powers, authorities, duties and functions in the care, protection and management of the estate of such patient.

(2) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund.

71.

Payment over of estate before discharge in certain cases. cf. Act No. 45, 1898, s. 134.

71. (1) If any patient is permitted to be absent from an admission centre, mental hospital or authorised hospital under the provisions of this Act, the Master may, in his discretion, pay over to the patient, or to any person on his behalf who gives 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 his current account 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.

(2) 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.

Sale, etc. by patient before his discharge may be set aside. cf. *Ibid.* s. 135.

72. 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 may, on application being made by the Master in such manner as is or may from time to time be prescribed by rules of Court, and on notice being given to such persons as the Court 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 a mentally ill person at the time when he made or executed the transfer, sale, alienation, charge, or lease.

Payments to discharged patients and to personal representatives of deceased patients. cf. *Ibid.* s. 136.

73. (1) 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 his current account 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, documents and chattels forming part of his estate.

(2) 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.

(3)

(3) The Master, in his discretion, may continue to have the care, protection and management of the estate of a discharged patient until the discharged patient obtains an order of the Court or the Master is satisfied that the discharged patient is capable of managing his own affairs.

(4) The Master, in his discretion, may after the death of a 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, documents 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 that probate of the will or letters of administration have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Unclaimed personal effects and moneys of patient.

cf. Act No. 45, 1898, s. 137.

74. (1) All personal effects in the hands of the Master belonging to a patient, and not claimed within two years from the date of the death or 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.

(2) All moneys standing to the credit of a patient in his current account in the trust fund at the end of six years from the date of the death or discharge of that patient shall be carried to and form part of the consolidated revenue.

(3) Nothing herein contained shall affect the right of a person under disability by reason of his being an infant, a mentally ill person or absent 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.

cf. *Ibid.* s. 138.

75. (1) 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.

(2)

(2) On the discharge or death of a patient, he or his legal personal representative (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 not a mentally ill person.

Relatives, etc., may agree for maintenance of patient. cf. Act No. 45, 1898, s. 139.

76. The Master may agree with any relative, guardian, or friend of any patient detained in an admission centre, mental hospital or authorised hospital for his maintenance while detained therein, and such relative, guardian, or friend shall be entitled to be reimbursed all necessary sums expended in such maintenance and interest thereon out of any real or personal property of such patient.

Owner, etc., of ship or aircraft liable for maintenance of certain mentally ill persons. cf. *Ibid.* s. 140.

77. (1) If within sixty days after the arrival of any ship or aircraft in New South Wales the Master has reasonable cause to believe that a passenger or member of the crew arriving by that ship or aircraft is a mentally ill person and has become, or is likely to become, a charge upon the public as a patient in an admission centre or mental hospital, it shall be lawful for the Master thereupon to require the owner, charterer, agent, or master of that ship or aircraft to execute, with two sufficient sureties, jointly and severally, a bond to Her Majesty in such sum as the Master may determine, not exceeding three thousand pounds, conditioned to pay to the Master the maintenance of that passenger or member of the crew in such admission centre or mental 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 of the ship or aircraft, subject to the approval of the Master, to return such passenger or member of the crew to the place whence he was transported.

(2) 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.

(3)

(3) No bond shall be required when the passenger or member of the crew is, at the date of the arrival of the ship or aircraft, domiciled in New South Wales; but the onus of proving such domicile as aforesaid shall be upon the said owner, charterer, agent, or master of the ship or aircraft.

Neglect or refusal to execute bond.

78. If the said owner, charterer, agent, or master of the ship or aircraft 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 three thousand pounds, to be recovered summarily before a stipendiary magistrate.

cf. Act No. 45, 1898, s. 141.

Cost of maintenance of patient may be recovered.

79. The cost to the Crown of the maintenance of a patient shall constitute a debt due to the Crown and shall be recoverable accordingly from the patient or his estate:

Provided that if the Master considers that undue hardship would be occasioned by the enforcement of such debt or other circumstances so warrant he may in his discretion either forego the debt altogether or accept a smaller sum in satisfaction thereof.

Court may direct Master to report as to mental health of any patient.

80. The Court may direct the Master to personally examine any patient, and take evidence and call for information as to the mental health of such patient, and report thereon to the Court, and the Court may make orders for and with respect to—

cf. *Ibid.* s. 148.

(a) the appointment of a guardian or otherwise for the protection, care, and management of the person or of the estate, or of the person and estate, of any patient who by any such report is found to be a mentally ill person; such guardian, according to the nature of his appointment, to have the same powers and authorities, and be subject to the same control and liabilities, as a committee of the person and estate of a protected person appointed under this Act;

(b) the appointment of a receiver or otherwise for the protection, care and management of the estate of such patient; such receiver to have the same powers and

and authorities and be subject to the same control and liabilities as a receiver of the estate of a protected person appointed under this Act;

(c) the application of the income of such patient or a sufficient part thereof for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such patient, and of or in connection with the said examination by the Master and the obtaining of such orders by the Court;

(d) the investment or other application for the purpose of accumulation or otherwise of the surplus (if any) of such income as lastmentioned for the use of such patient, his wife, or children as to the Court may seem fit.

Division 3.—*Management of Estates of Certain Persons not being Patients.*

81. (1) The Court may order that any property of a protected person be sold, charged, mortgaged, dealt with, or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to all or any of the purposes following:— Power to raise money for certain purposes. cf. Act No. 45, 1898, s. 149.

(a) payment of such protected person's debts or engagements;

(b) discharge of any incumbrance on his property;

(c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit;

(d) payment of or provision for the expenses of his future maintenance;

(e) payment of the costs of any proceeding under this Act, or of any sale or other disposition made under this Act.

(2) In case of a charge or mortgage being made under this Act for the expenses of future maintenance the Court may direct the same to be payable, either contingently, if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as the Court thinks expedient.

82. The Court may by order authorise and direct the committee of the estate of a protected person to do all or any of the following things: — **Powers exercisable by committee under order of Court.** cf. Act No. 45, 1898, s. 150.

(a) sell any property belonging to such protected person;

(b) make exchange or partition of any property belonging to such protected person, or in which he is interested, and give or receive any money for equality of exchange or partition;

(c) carry on any trade or business of such protected person;

(d) grant leases of any property of such protected person for building, agricultural or other purposes;

(e) surrender any lease and accept a new lease;

(f) accept a surrender of any lease and grant a new lease;

(g) execute any power of leasing vested in such protected person having a limited estate only on the property over which the power extends;

(h) perform any contract relating to the property of such protected person entered into by him before he became a protected person;

(i) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to such protected person;

(j)

(j) exercise any power or give any consent required for the exercise of any power where the power is vested in such protected person for his own benefit, or the power of consent is in the nature of a beneficial interest in such protected person;

(k) sequestrate the estate of such protected person under the provisions of the bankruptcy laws;

(l) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts;

(m) bring and defend actions, suits, and other proceedings on behalf of such protected person.

Property exchanged and renewed lease to be to same uses as before. cf. Act No. 45, 1898, s. 151.

83. Any property taken in exchange and any renewed lease accepted pursuant to this Act on behalf of a protected person under the powers of this Act, shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

Extent of leasing power. cf. *Ibid.* s. 152.

84. (1) The power to authorise leases of a protected person's property under this Act shall extend to property of which the protected person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the protected person, and all persons entitled in remainder and reversion expectant upon the estate tail of the protected person including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the protected person shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the protected person or his committee would have had.

(2) Leases authorised to be granted and accepted by or on behalf of a protected person under this Act may be for such number of lives or such term of years at such rent and subject to such reservations, covenants, and conditions as the Court may order.

(3)

(3) Fines or other payments on the renewal of leases may be paid out of the estate of the protected person, or charged with interest on the leasehold property, as the Court may order.

Interest in property of certain persons not to be altered. cf. Act No. 45, 1898, s. 153.

85. (1) Any patient, protected person or incapable person, his heirs, next of kin, devisees, legatees, executors, administrators, and assigns shall have the same interest in any moneys or other property arising from any sale, mortgage, charge, disposition of any property or other dealing therewith under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made, and the surplus moneys or other property shall be of the same nature as the property sold, mortgaged, charged, disposed of or dealt with.

(2) Moneys received for equality of partition and exchange, and all fines, premiums, and sums of money received upon the grant or renewal of a lease where the property, the subject of the partition, exchange, or lease was real estate of the patient, protected person or incapable person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate, except in the case of fines, premiums and sums of money received upon the grant or renewal of leases of which the patient, protected person or incapable person was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the patient, protected person or incapable person.

(3) In order to give effect to the foregoing provisions of this Act the Court may make such orders and direct such conveyances, deeds, and things to be executed and done as it thinks fit.

86.

Expenses of improvements may be charged on estate. cf. Act No. 45, 1898, s. 154.

86. (1) The Court may order that the whole or any part of any moneys expended or to be expended under its order for the permanent improvement, security, or advantage of the property of a protected person or of any part thereof, shall with interest be a charge upon the improved property or any other property of the protected person, but so that no right of sale or foreclosure during the lifetime of the protected person shall be conferred by the charge, and the interest shall be kept down during his lifetime out of the income of his general estate as far as the same is sufficient to bear it.

(2) The charge may be made either to some person advancing the money, or, if the money is paid out of the protected person's general estate to some person as a trustee for him as part of his personal estate.

Court may order certain estates to be applied for maintenance. cf. *Ibid.* s. 155.

87. Where the net amount or net estimated value of the property of any protected person does not exceed the sum of five hundred pounds, the Court may order the amount of the property or the produce thereof when realised to be paid or transferred to some fit person, to be applied in or towards the maintenance of the protected person, either at the discretion of such fit person, or in such manner, and subject to such control as the Court may direct, and for the purpose of giving effect to any such order the Court may order any real estate or other property whatsoever of the protected person to be sold, and a valid conveyance or transfer thereof to be executed or made by such fit person as it shall direct.

Application of income for temporary maintenance. cf. *Ibid.* s. 156.

88. (1) Where it appears to the Court that there is reason to believe that the mental illness of any protected person is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of such protected person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income, or of ready money belonging to the protected person, and standing to his account with a banker

banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as it may think proper for the temporary maintenance of the protected person and the members of his immediate family who are dependent upon him for maintenance, and may order the payment of any such sum of money as aforesaid, or any part thereof, to some fit person, and may direct the same to be paid to such fit person accordingly, and when received to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid.

(2) The receipt in writing of the person named in the order to whom payment is to be made for any moneys payable to him by virtue thereof shall effectually discharge the banker, agent, or other person paying the same from the moneys therein respectively expressed to be received.

(3) The person so receiving any moneys by virtue of this section shall pass an account thereof before the Master when required.

89. Where a person, being a member of a partnership, becomes a protected person the Court may, by order, dissolve the partnership.

Court may dissolve partnership.

cf. Act No. 45, 1898, s. 157.

90. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of a protected person, execute, make, and do all such conveyances, deeds, transfers, and things for giving effect to any order under this Act as the Court directs; and every such conveyance, deed, transfer, and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

Power to carry orders into effect.

cf. *Ibid.* s. 158.

91.

Committee may act as trustee or guardian in certain cases. cf. Act No. 45, 1898, s. 159.

91. Where a power is vested in a protected person in the character of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the committee of the estate, in the name and on behalf of the protected person, under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

Appointment of new trustees by committee. cf. *Ibid.* s. 160.

92. Where under this Act the committee of the estate, under order of the Court, exercises in the name and on behalf of a protected person a power of appointing new trustees vested in him the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same rights and powers as they would have had if the order had also been made by the Supreme Court under any law for the time being in force relating to trusts; and the Court may in such case where it seems to be expedient make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of any such law as aforesaid on the appointment thereunder of new trustees.

Temporary provision for maintenance. cf. *Ibid.* s. 161.

93. In any case where, pending the appointment of a committee, it appears to the Master desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the protected person or any member of his family out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Master may, by certificate, authorise such banker or other person to pay to the person to be named in such certificate such sum as he certifies to be proper; and may, by such certificate, give any directions as to the proper application thereof for the protected person's benefit by that person, who shall be accountable for the same, as the Master directs.

94.

Transfer of stock belonging to certain persons. cf. Act No. 45, 1898, s. 162.

94. Where any stock is standing in the name of or is vested in a protected person beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a protected person in trust for the protected person or as part of his property, and the committee dies intestate or himself becomes a mentally ill person or is out of the jurisdiction, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new committee or as he directs for the space of fourteen days after a request in writing for that purpose made by a new committee, then the Court may order some fit person to transfer the stock to or into the name of a new committee or otherwise, and also to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court directs.

Stock in name of mentally ill persons residing out of State may be ordered to be transferred. cf. *Ibid.* s. 163.

95. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction that a declaration to the effect that such person is a mentally ill person, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock to or into the name of the curator or other person appointed as aforesaid or otherwise, and also to receive and pay over the dividends thereof as the Court thinks fit.

Who shall be appointed to make transfer. cf. *Ibid.* s. 164.

96. Where an order is made under this Act for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the company, society or association in whose books the transfer is to be made.

Costs and remuneration may be paid out of estate. cf. *Ibid.* s. 165.

97. The Court may order the costs and expenses of and relating to the petitions, applications, orders, directions, conveyances, and transfers to be presented or made in pursuance of this Part of this Act to be paid and raised out of or from the property, or the rents, income, or profits in respect of which the same respectively shall be presented or made in such manner as it may think proper; and the Court may order such sum by way of remuneration to be paid out of the estate to the committee of any protected person as the Court may think fit.

98.

98. Every conveyance, lease, surrender, transfer, charge, or other disposition made or accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons whomsoever; and this Act shall be a full indemnity and discharge to all persons for all acts and things done or permitted to be done in pursuance thereof, or of any order of the Court made or purporting to be made under this Act.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

cf. Act No. 45, 1898, s. 166.

99. Nothing in this Act contained shall subject any part of the property of a protected person to the debts or demands of his creditors, further or otherwise than as the same was immediately before the commencement of this Act subject thereto by due course of law.

Act not to subject property of protected persons to debts.

cf. *Ibid.* s. 167.

PART XII.

Special Provisions Relating to the Property of Mentally Ill Patients Residing Outside New South Wales.

100. (1) In this Part of this Act—

"Reciprocating state" means any part of Her Majesty's dominions outside New South Wales which has been declared under subsection two of this section to be a reciprocating state for the purposes of this Part of this Act.

Interpretation and application of Part.

cf. *Ibid.* s. 167A.

(2) Where the Governor is satisfied that the laws in force in any part of Her Majesty's dominions outside New South Wales are such as to enable powers to be exercised in that part in cases of patients residing in New South Wales substantially similar to the powers conferred by this Part of this Act in cases of mentally ill patients residing in that part, the

the Governor may by proclamation published in the Gazette declare that part to be a reciprocating state for the purposes of this Part of this Act, and thereupon that part shall become a reciprocating state within the meaning of this Part of this Act.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

(4) References in the foregoing provisions of this section to Her Majesty's dominions outside New South Wales shall be construed as including references to any territory which is under Her Majesty's protection and to any territory the subject of a trusteeship agreement approved by the General Assembly of the United Nations which is under the administration of a government of any part of Her Majesty's dominions.

Powers of Master as to property in New South Wales of mentally ill patients in reciprocating state.

cf. Act No. 45, 1898, s. 167B.

101. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property and estates of mentally ill patients in any hospital or other institution situated in that state and authorised for the reception and care of mentally ill persons—

(a) certifies in writing under his hand and seal to the Master that any person is a mentally ill patient residing in that state and is confined in any such hospital or other institution and that he is possessed of or entitled to or appears to be entitled to or interested in real or personal property in New South Wales; and

(b) by instrument in writing under his hand and seal authorises the Master to collect, recover, manage, sell or otherwise dispose of and administer such property or to make inquiry respecting such property,

the Master shall have and may exercise over and in respect of such property the same powers of collection, recovery, management, sale, disposition, administration, and inquiry as he

he would have had and may have exercised over such property if such mentally ill patient had been resident in New South Wales and a patient within the meaning of this Act; and the provisions of this Act apply in respect of such property accordingly.

(2) Where the Master has, pursuant to any such authority as is referred to in paragraph (b) of subsection one of this section and in the exercise of the powers conferred upon him by that subsection, received any moneys or properties, the Master may, after—

(a) payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and

(b) satisfying or providing for the following debts and claims of which he has notice, namely, debts of the mentally ill patient named in such authority owing to persons resident in New South Wales and the claims of persons so resident against that patient,

pay over or deliver the balance of such moneys or properties to the officer of the reciprocating state who signed such authority or his successor in office, without seeing to the application thereof, and without incurring any liability in respect of such payment over or delivery, and shall duly account to that officer or his successor for that balance.

PART XIII.

Court Visitors.

102. The Court may by general rule or special order: — Court may order protected or incapable persons to be visited.

(a) direct the Director or other fit person to visit any protected person or incapable person and to make a report in writing to the Court or a judge of the state

cf. Act No. 45, 1898, s. 168.

state of mind and bodily health and general condition, and also of the care and treatment of the person visited;

(b) 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 assets of the person visited, and as to the orders of the Court made in respect thereof;

(c) order that any fees and expenses connected with the visit be paid out of the estate of the person visited.

PART XIV.

MISCELLANEOUS PROVISIONS.

Offences in relation to certificates by medical practitioners.

103. A medical practitioner who signs any certificate in or to the effect of the form set out in Part I of Schedule Two or in Schedule Three without having personally examined the person to whom it relates, at the time specified in such certificate, for the purpose of ascertaining the condition of such person or who wilfully makes any false statement in any such certificate shall be guilty of an offence against this Act.

Medical certificates, requests, etc., may be amended.

104. (1) Any medical certificate, request, recommendation, direction, order, or other document, by virtue of which any person has been admitted to an admission centre, mental hospital or authorised hospital, and which is incorrect or defective in any particular, may, with the approval of the Director, and within twenty-eight days after the admission of such person, be amended by the person who has signed the same; and such medical certificate, request, recommendation, direction, order, or other document as so amended shall thereupon be deemed to have and always to have had effect from its original date.

(2)

(2) If such medical certificate, request, recommendation, direction, order, or other document is not so amended, the Director may order the discharge of the person so admitted as aforesaid; or direct the superintendent of such admission centre, mental hospital or authorised hospital to obtain a new medical certificate, request, recommendation, direction, order or other document which shall have and be deemed always to have had effect for all purposes as if it had been obtained, made, and signed on the date on which the medical certificate, request, recommendation, direction, order or other document upon which such person was admitted to such admission centre, mental hospital or authorised hospital was obtained, made and signed.

Patients absent without leave may be retaken.

105. Where a patient absents himself from any admission centre, mental hospital or authorised hospital otherwise than in accordance with the provisions of this Act the superintendent or any officer, servant or other person employed in such admission centre, mental hospital or authorised hospital, member of the police force or any other person authorised by the Director or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised may retake such patient and return him to such admission centre, mental hospital or authorised hospital.

Penalty on superintendents, officers, etc., ill-treating patients.

106. Any superintendent, officer, servant or other person employed in an admission centre, mental hospital or authorised hospital who strikes, wounds, ill-treats, or wilfully neglects any patient or voluntary patient shall for every such offence, be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any period not exceeding six months, or to both such penalty and imprisonment:

Provided that nothing in this section contained shall prejudice or affect any civil responsibility of the offender arising out of such offence.

107.

107. The powers, authorities, duties and functions conferred or imposed upon a superintendent of or an official visitor to an admission centre, mental hospital or authorised hospital by or under this Act shall be exercised and performed by him only in respect of that admission centre, mental hospital or authorised hospital and the patients and voluntary patients therein.

Powers of superintendents and official visitors exercisable in respect of places to which they are appointed.

108. (1) (a) This section shall apply to leucotomy and such other operations or medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

Conditions applicable to performance or giving of certain operations or medical treatment upon or to patients. cf. Act No. 45, 1898, s. 179A.

(2) No patient shall be subjected to any operation or medical or therapeutic treatment to which this section applies—

(a) by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless the Director has consented to the performance of such operation or the application of such treatment; or

(b) by any other medical practitioner or practitioners unless the Director has consented to the performance of such operation or the application of such treatment by such practitioner or practitioners.

(3)

(3) The Director shall not give such consent unless—

(a) he is satisfied upon the report of a superintendent that such operation or treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated, or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient; and

(b) in the case of leucotomy and any other operation or medical or therapeutic treatment in respect of which a Consultative Committee has been constituted as hereinafter provided the appropriate Consultative Committee has recommended the subjection of the patient to such operation or medical or therapeutic treatment.

(4) No patient shall be subjected to any operation or medical or therapeutic treatment referred to in paragraph (b) of subsection three of this section if the person, on whom notice has been served by the Director as hereinafter provided, has within the time prescribed expressed his disapproval of such operation or medical or therapeutic treatment.

Such notice shall state the name of the patient proposed to be subjected to any such operation or medical or therapeutic treatment, the nature of such operation or treatment, and the time within which disapproval may be expressed.

Such notice shall—

(a) where the patient is married and not separated by order of a court or by agreement from his spouse, be served on the spouse;

(b) where the patient is not married or is separated by order of a court or by agreement, be served on the parents or the surviving parent of such patient;

(c) where there is no person on whom notice is required to be served under the foregoing provisions of paragraphs (a) and (b) of this subsection, or the Director is unable to ascertain particulars of the

name

name and whereabouts of any person on whom notice is required to be so served, be served on such person as the Director considers to be the person in whose care, guardianship or custody the patient was prior to his admission to the admission centre, mental hospital or authorised hospital.

Where the Director has reason to believe that any disapproval expressed by any person in accordance with the foregoing provisions of this subsection has been unjustifiably or unreasonably expressed he may refer the matter to the Master for inquiry and determination. Any person who appears to the Master to be interested in the matter may be heard in person or by counsel at any such inquiry.

If the Master is of opinion that such disapproval has been expressed unjustifiably or unreasonably he may order that the patient be subjected to any such operation or medical or therapeutic treatment.

There shall be an appeal to the Full Court of the Supreme Court from any such order in such manner as may be prescribed by rules of Court.

(5) (a) There shall be constituted a Consultative Committee for the purposes of making recommendations to the Director relating to the subjection of patients to the operation of leucotomy.

(b) The Minister may in respect of any other operation or medical or therapeutic treatment to which the provisions of this section apply constitute a Consultative Committee for the purpose of making recommendations to the Director relating to the subjection of patients to such operation or medical or therapeutic treatment.

(c) Any Consultative Committee constituted pursuant to the provisions of this subsection shall consist of such medical practitioners and other persons as the Minister appoints.

(6) Where in the opinion of a superintendent the delay incurred in obtaining the consent of the Director to the performance or application of any operation or medical or therapeutic treatment to which this section applies would endanger the life of any patient such superintendent may—

(a) himself perform such operation or apply such treatment; or

(b) by writing under his hand consent to the performance of such operation upon or the application of such treatment to such patient by any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or by any other medical practitioner or practitioners named in such consent.

Where a superintendent performs any operation or applies any treatment or consents to such performance or application in accordance with the provisions of this subsection he shall forthwith report in writing to the Director the circumstances of the case.

(7) Any consent given by the Director or of a superintendent under this section shall, for the protection of any medical practitioner performing any operation or applying any treatment in accordance with such consent and of any person concerned with the performance of such operation or with the application of such treatment, have the same effect as if such consent had been given by the person operated upon or treated while he was not a mentally ill person or in the case of a minor, as if such consent had been given by his parents.

Certain operations or treatments may be performed or applied without consent of patients.

109. (1) (a) This section shall apply to electro convulsive therapy, electro narcosis therapy and insulin shock and such operations and medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2) A patient may be subjected to any operation or medical or therapeutic treatment to which this section applies by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or any other medical practitioner or practitioners notwithstanding that the patient or any other person legally entitled to consent to the operation or medical or therapeutic treatment of the patient has not consented thereto.

(3) No operation or medical or therapeutic treatment to which this section applies shall be performed on or applied to a patient unless the superintendent has determined that such operation or medical or therapeutic treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient.

Any such determination shall be expressed in writing.

110. (1) (a) Any proclamation under section one hundred and eight or one hundred and nine of this Act or subsection two of this section shall— Ancillary provisions to ss. 108 and 109.

(i) be published in the Gazette;

(ii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;

(iii) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) The day so appointed shall not be earlier than the day next following—

(i) the fifteenth sitting day after such proclamation has been laid before both Houses of Parliament if notice of motion for the disallowance of such proclamation is not given in either House of Parliament within fifteen sitting days after such proclamation has been laid before such House; or

(ii) the day upon which a notice of motion for the disallowance of such proclamation duly given in either House of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days.

(c) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation such proclamation shall not take effect.

(2) Any proclamation under section one hundred and eight or one hundred and nine of this Act may be revoked by the Governor by proclamation.

(3) No action claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against Her Majesty, the Director or a superintendent or any member of a medical staff or medical practitioner referred to in sections one hundred and eight and one hundred and nine of this Act for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the enactment of those sections or the giving of any consent by the Director or a superintendent or as a result of any operation or treatment performed or applied in accordance with the provisions of those sections.

(4) In sections one hundred and eight and one hundred and nine of this Act "superintendent" in relation to an authorised hospital the holder of the license for which is not a medical practitioner means any medical practitioner visiting such authorised hospital pursuant to the provisions of section eleven of this Act.

Penalties.

111. (1) Any person guilty of an offence against this Act shall, except where otherwise expressly provided, be liable to a penalty not exceeding one hundred pounds.

(2) Any such penalty may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Regulations.

112. (1) The Governor may make regulations, not inconsistent with this Act, for and with respect to : —

(a) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act;

(b) prescribing the keeping and form of such books, records, registers or other documents or the furnishing of such reports or statistics as may be necessary or convenient for the administration of this Act;

(c) prescribing the duties, responsibilities, obligations and liabilities of superintendents and medical officers;

(d) all matters relating to correspondence by and with patients including the authorisation of the perusal and withholding of such correspondence;

(e) the general administration of admission centres and mental hospitals;

(f) all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

(2) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULES.

SCHEDULE ONE.

No. of Act.	Name of Act.	Extent of Repeal.
1898, No. 45	Lunacy Act of 1898	The whole.
1924, No. 10	Crimes (Amendment) Act, 1924	Section twenty-nine.
1934, No. 39	Lunacy (Amendment) Act, 1934	The whole.
1937, No. 37	Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937.	Section four.
1944, No. 19	Public Service (Amendment) Act, 1944.	Section three.
1944, No. 38	Lunacy (Amendment) Act, 1944	The whole.
1945, No. 33	Lunacy (Amendment) Act, 1945	The whole.
1946, No. 38	Lunacy (Amendment) Act, 1946	The whole.
1947, No. 41	Jury (Amendment) Act, 1947 ...	Subsection three of section eight.
1949, No. 43	Mental Institution Benefits Agreement Act, 1949.	Section three.
1952, No. 31	Lunacy (Amendment) Act, 1952 ...	The whole.
1955, No. 3	Lunacy (Amendment) Act, 1955 ...	The whole.

SCHEDULE TWO.

MENTAL HEALTH ACT, 1958.

MEDICAL CERTIFICATE.

Part I.

I, ..., of
(*name in full*)
..... (Medical Practitioner)
(*address*)
do hereby certify that on the ..... day of .....
19 , at .....
(*state place where examination took place*)
I personally examined .....
(*name of person in full*)
and I am of the opinion that the said person is a mentally ill person and is a suitable case for admission to the Admission Centre at ..... for observation and treatment.
(*name of Institution*)

* In my opinion the said person is:— * Strike out and initial any of the conditions that are not applicable.

(a) suicidal
(b) dangerous to others
(c) unable to care for himself
(d) not under proper care and control.

The following treatment and medication (*if any*) has been administered in respect of the mental illness of the said ....., viz.

So far as I am aware—

(a) the bodily health and condition of the said .... is ..... and

(b) the said ..... * has / has not suffered any recent injury. * Strike out words inapplicable.

If the said ..... has suffered recent injury the particulars of such injury are as follows:—

Made and signed this ..... day of ....., 19 .

Signature .....

Part II.

If the assistance of a member of the Police Force is required this Part of the Schedule should be completed.

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the said ..... to the Admission Centre at .....

Made and signed this ..... day of ..... 19 .

Signature .....

SCHEDULE

SCHEDULE THREE.

MENTAL HEALTH ACT, 1958.

I, the undersigned, being a medical practitioner, hereby certify that I, on the ..... day of ....., 19 , at *..... ..... separately from any other medical practitioner, personally examined .... of †....., whose occupation is ..... and that the said ..... is mentally ill and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:—

(1) Facts indicating mental illness observed by myself.

(2) Other facts (if any) indicating mental illness communicated to me by ‡

Dated at ..... this ..... day of ....., 19 .

Signature .....

Place of abode .....

* Insert name and address of place of examination.

† Insert residence.

‡ State full names and addresses of every communicant.

SCHEDULE FOUR.

MENTAL HEALTH ACT, 1958.

WHEREAS it has been duly certified under section ..... of the Mental Health Act, 1958, that ..... a prisoner in the ..... is mentally ill, I, the Minister for Health, exercising the powers conferred upon me under the said Act, hereby order that the said ..... be removed to the Mental Hospital at ..... to remain there until he is certified to be not mentally ill and dealt with in accordance with the said section.

Given under my hand the ..... day of ....., 19 .

.....

Minister for Health.

Sydney: V. C. N. Blight, Government Printer—1958

[6*s.* 3*d.*]

PROOF

No. , 1958.

A BILL

To make provision with respect to the care, treatment and control of persons who are mentally ill and the management of their estates; to repeal the Lunacy Act of 1898 and certain other Acts; and for purposes connected therewith.

[MR. SHEAHAN;—5 *November*, 1958.]

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:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Mental Health Act, 1958". Short title and commencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows : —

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–8.

PART III.—ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 9–11.

PART IV.—ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 12–15.

PART V.—DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION—*ss.* 16–20.

PART VI.—VOLUNTARY PATIENTS—*ss.* 21–22.

PART VII.—MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES—*ss.* 23–33.

PART VIII.—WELFARE OFFICERS—*s.* 34.

PART IX.—OFFICIAL VISITORS—*ss.* 35–36.

PART X.—PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES—*ss.* 37–50.

PART XI.—MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS—*ss.* 51–99.

Division 1.—*General Powers and Duties of Master—ss.* 51–58.

Division 2.—*Powers and Duties of Master in Respect to Estates of Patients—ss.* 59–80.

Division 3.—*Management of Estates of Certain Persons not being Patients—ss.* 81–99.

PART XII.—SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES—*ss.* 100–101.

PART

PART XIII.—COURT VISITORS—*s.* 102.

PART XIV.—MISCELLANEOUS PROVISIONS—*ss.* 103–112.

SCHEDULES.

3. (1) The several Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) (a) The persons who immediately before the commencement of this Act held office as the Inspector-General of the Insane, Deputy Inspector-General and Deputy Master in Lunacy shall be deemed as from such commencement to have been appointed by the Governor as the Director, Deputy Director and Deputy Master in the Protective Jurisdiction of the Supreme Court, respectively.

(b) All persons who immediately before the commencement of this Act held office as superintendents, deputy superintendents, medical officers or otherwise under the Acts hereby repealed shall continue to hold office as such as from such commencement.

(c) All persons who immediately before the commencement of this Act held office as official visitors under the Acts hereby repealed shall be deemed to have been appointed as such under this Act :

Provided that any such official visitor who has at such commencement attained the age of seventy years shall upon such commencement be deemed to have vacated his office as such.

(d) All reception-houses appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be admission centres.

(e) All hospitals for the insane or for the criminal insane appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be mental hospitals.

(f)

(f) Any house for the reception of insane patients in respect of which a license granted under the Acts hereby repealed is in force at the commencement of this Act shall be deemed to be licensed as an authorised hospital until such license would have expired but for the provisions of this Act or is sooner revoked in like manner as a license for an authorised hospital may be revoked.

(g) All persons who immediately before the commencement of this Act were incapable persons, insane patients or patients, and insane persons within the meaning of the Acts hereby repealed shall respectively be deemed to be incapable persons, patients and protected persons within the meaning of this Act.

(h) The care, protection, administration and management of the estate of any person which immediately before the commencement of this Act was exercised by a committee of the estate of such person, a person appointed to undertake the care and management of such estate or the Master in Lunacy may continue to be exercised by such committee, person so appointed or the Master under and subject to the provisions of this Act.

(i) All rules of Court, regulations and proclamations made or deemed to have been made under the Acts hereby repealed and in force at the commencement of this Act shall, until varied or rescinded under this Act, continue in force and shall be deemed to have been made under this Act.

(j) All proceedings initiated, pending or part heard under the Acts hereby repealed at the commencement of this Act shall be continued as if such proceedings had been taken or initiated under this Act.

4. In this Act, unless the context or subject matter otherwise indicates or requires: — Interpretation.

"Admission centre" means a place appointed to be an admission centre under this Act.

"Authorised

"Authorised hospital" means a hospital in respect of which a license granted to any person under Part III of this Act is for the time being in force.

"Committee" means committee appointed under this Act.

"Continued treatment patient" means a patient in respect of whom an order has been made under section fourteen of this Act that he be reclassified as a continued treatment patient and be detained in an admission centre, mental hospital or authorised hospital.

"Court" means the Supreme Court in its Protective Jurisdiction.

"Director" means Director of State Psychiatric Services appointed under this Act.

"Incapable person" means any person who is proved to the satisfaction of the Court under section thirty-nine of this Act to be through mental infirmity, arising from disease or age, incapable of managing his affairs.

"Judge" means judge of the Court.

"Justice" means justice of the peace.

"Manager" means the person appointed under section thirty-nine of this Act to undertake the care and management of the property of an incapable person.

"Master" means Master in the Protective Jurisdiction of the Supreme Court.

"Mental hospital" means a place appointed to be a mental hospital under this Act.

"Mentally ill person" means a person who owing to mental illness requires care, treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs and "mentally ill" has a corresponding meaning.

"Patient" means any person admitted to and detained in any admission centre, mental hospital, or authorised hospital in accordance with the provisions of this Act and includes any person so admitted and detained while absent from such admission centre, mental hospital or authorised hospital either with or without leave of absence, but does not include a voluntary patient or, in Part V of this Act, except as provided in subsection three of section nineteen of this Act, a person detained in a mental hospital pursuant to Part VII of this Act.

"Prescribed" means prescribed by this Act or the regulations.

"Prison" means prison within the meaning of the Prisons Act, 1952.

"Protected person" means a person in respect of whom a declaration under section thirty-eight of this Act is in force.

"Regulations" means regulations made under this Act.

"Schedule" means Schedule to this Act.

"Stock" means any share or other interest in any company, society or association, and any fund, annuity or security transferable in books kept by any company, society or association, or transferable by deed alone, or by deed accompanied by other formalities, and any money payable for the discharge or redemption thereof, and any share or interest therein.

"Superintendent" means superintendent of any admission centre, mental hospital or authorised hospital.

"Tribunal" means a Mental Health Tribunal constituted under section thirteen of this Act.

"Voluntary patient" means any person who has been admitted to an admission centre, mental hospital or authorised hospital under section twenty-one of this Act.

"Welfare officer" means a person appointed as a welfare officer under section thirty-four of this Act.

References to certain words and expressions —how to be construed.

5. As from the commencement of this Act, in the construction, and for the purposes, of any Act, by-law, regulation, ordinance or any other instrument of the same or a different kind or nature, any reference to, or to be read, deemed and taken to refer to—

(a) any word or expression, within the meaning of the Acts hereby repealed, specified in the first column of the Schedule hereunder or to any like word or expression shall be read, deemed and taken to refer to the word or expression appropriate thereto specified in the second column of such Schedule unless the context or subject matter otherwise indicates or requires.

THE SCHEDULE.

First Column.	Second Column.
Insane, lunatic, insane patient, patient, incapable person, insane person, committee of the estate of an insane person, manager of the estate of an incapable person, Master in Lunacy, Lunacy Act of 1898, Inspector-General of the Insane, Deputy Inspector-General, Chief Clerk in Lunacy, Supreme Court in its Lunacy Jurisdiction, hospital for the insane, hospital for the criminal insane, reception house, licensed house.	Mentally ill, mentally ill person, patient, incapable person, protected person, committee of the estate of a protected person, manager of the estate of an incapable person, Master in the Protective Jurisdiction of the Supreme Court, Mental Health Act, 1958, Director, Deputy Director, Chief Clerk in the Protective Jurisdiction of the Supreme Court, Supreme Court in its Protective Jurisdiction, mental hospital, admission centre, authorised hospital.

(b) any of the provisions of the Acts hereby repealed shall be read, deemed and taken to refer to the corresponding provisions (if any) of this Act.

6.

Protective Jurisdiction of Supreme Court.

6. There shall be a Protective Jurisdiction of the Supreme Court.

The jurisdiction which immediately before the commencement of this Act was exercisable by the Supreme Court in its Lunacy Jurisdiction shall be exercised by the Supreme Court in its Protective Jurisdiction.

PART II.

ADMINISTRATION.

Director of State Psychiatric Services.

7. (1) The Governor may appoint a Director of State Psychiatric Services and a Deputy Director of State Psychiatric Services, who shall have and may exercise and perform all the powers, authorities, duties and functions of the Director during his absence for any cause whatsoever.

(2) The Director shall from time to time visit and inspect every admission centre, mental hospital and authorised hospital with or without previous notice and at any time of the day or night as he thinks fit.

The Director may at any time make such inspections, investigations, and inquiries as he deems necessary, and shall make such inspections, investigations and inquiries as are directed by the Minister, with respect to the care, treatment or control of patients and voluntary patients or with respect to the management of any admission centre, mental hospital or authorised hospital.

(3) (a) The Director visiting any admission centre, mental hospital or authorised hospital may, by notice in writing, require any person to furnish him with such information as he requires concerning any of the matters with respect to which the Director is by this Act authorised to make inspections, investigations or inquiries or to attend and give evidence before him concerning any such matters, and to produce all books, documents or other papers whatever in such person's custody or under his control relating thereto.

(b)

(b) The Director may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he may administer an oath.

(c) Any person who without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Director or to answer truly and fully any questions put to him, or to produce any book, document or papers required of him by the Director, shall be guilty of an offence against this Act.

(4) (a) Any Director or Deputy Director who has any pecuniary interest, directly or indirectly, in any authorised hospital shall be deemed guilty of misconduct within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

(b) A Director or Deputy Director shall not sign any certificate or recommendation for the admission of any patient into or for the further observation and treatment of any patient in any admission centre, mental hospital or authorised hospital.

(5) The Director shall furnish to the Minister an annual report in writing as to the state and condition of the several admission centres, mental hospitals and authorised hospitals and as to the care of the patients and voluntary patients therein, and as to such other particulars as he thinks fit, and a true copy of such report shall forthwith be laid before Parliament if then in session, or if not then in session, within twenty-one sitting days after the commencement of the next session of Parliament.

Medical superintendents.

8. The Governor may appoint a medical superintendent for each admission centre and mental hospital and if he thinks fit a deputy medical superintendent therefor. No person shall be so appointed unless he is a medical practitioner.

A deputy medical superintendent shall have and may exercise and perform all the powers, authorities, duties and functions of the superintendent during his absence for any cause whatsoever.

PART

PART III.

ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Admission centres.

9. The Governor may, by notification in the Gazette, appoint any place to be a place for the admission and temporary treatment of mentally ill persons and every such place shall be an admission centre for mentally ill persons. Any such appointment may be revoked in like manner.

Mental hospitals.

10. The Governor may, by notification in the Gazette, appoint any place to be a mental hospital and in and by such notification may assign a name to such hospital. Any such appointment may be revoked in like manner.

Authorised hospitals.

11. (1) The Minister on the recommendation of the Director may, subject to the provisions hereinafter contained, by writing under his hand in or to the effect of the prescribed form grant to any person or to two or more persons jointly, a license to keep a hospital for the admission and treatment of a number of patients and voluntary patients not exceeding the number specified in such license.

Any such license shall be in force for a period of twelve months but may be renewed from time to time for a further period of twelve months.

(2) Applications for a license under this section shall be made to the Minister, shall be in or to the effect of the prescribed form and shall be accompanied by a plan of the premises in respect of which the license is desired.

(3) The Minister may, for good cause, revoke any such license. One month's notice in writing of the proposed revocation shall be given by the Minister to the holder of such license.

(4) If after the expiration of two months from the termination of a license, whether by effluxion of time or revocation thereof, there is in any authorised hospital in respect of which such license has so terminated any patient or voluntary patient, every person keeping such hospital shall be guilty of an offence against this Act.

(5) No person (unless he is a person who derives no profit therefrom, or a committee, or manager, or otherwise authorised under this Act) shall receive to board or lodge in any house, or take the care or charge of, any patient or voluntary patient.

(6) The holder of a license under this section shall where the authorised hospital in respect of which he holds such license—

(a) has more than one hundred patients and voluntary patients have at all times a medical practitioner resident therein;

(b) has more than fifty but not more than one hundred patients and voluntary patients cause a medical practitioner to attend such authorised hospital daily;

(c) has fifty or less patients and voluntary patients cause a medical practitioner to attend such authorised hospital at least twice a week, or where such number of patients and voluntary patients is less than ten and the Minister authorises the holder of the license to cause a medical practitioner to attend such authorised hospital at specified intervals less frequently than twice a week cause a medical practitioner to attend accordingly.

The medical practitioner resident in an authorised hospital pursuant to paragraph (a) of this subsection shall be the superintendent of such hospital. Where there is no medical practitioner resident in any authorised hospital the holder of the license for such hospital shall be the superintendent of such hospital.

(7) The superintendent of any authorised hospital shall cause to be kept such records and furnish to the Director such particulars as are prescribed in connection with the admission, treatment, discharge, removal, absence with or without leave or death of every patient and voluntary patient admitted to such authorised hospital.

(8) The holder of a license shall not make or cause to be made any additions or alterations to the authorised hospital for which he holds such license without the approval in writing of the Minister.

PART IV.

ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Procedure for admitting persons to admission centres.

12. (1) A person may be admitted to and detained in an admission centre—

(a) upon the certificate of a medical practitioner who is of the opinion that such person is a mentally ill person;

(b) upon a written request to be so admitted and detained made by him to the superintendent of such admission centre;

(c) upon a written request for him to be so admitted and detained made to the superintendent of such admission centre by a relative or friend of such person;

(d) where he is taken to such admission centre by a member of the police force and a copy of an order, relating to such person, made by a justice under subsection two or three of this section is handed to the superintendent of such admission centre by such member of the police force;

(e) where he is taken to such admission centre by a member of the police force who in writing informs the superintendent of such admission centre that such

such member believes such person to be a mentally ill person and that such member found such person wandering at large or committing some offence against the law or in circumstances which reasonably led him to believe that such person was about to commit some offence against the law:

Provided that a person admitted to or detained in an admission centre pursuant to paragraph (b), (c), (d) or (e) of this subsection shall be examined by the superintendent or a medical officer attached to such admission centre as soon as practicable after his admission thereto and shall not be detained therein after such examination unless such superintendent or medical officer certifies that in his opinion such person is a mentally ill person.

(2) Where a person informs a justice on oath that—

(a) he believes any other person to be a mentally ill person, and

(b) such other person is without sufficient means of support, or is wandering at large, or has been discovered committing some offence against the law or in circumstances which may reasonably lead a person to suspect that such other person was about to commit some offence against the law,

such justice may by order under his hand require a member of the police force to apprehend such other person and to take him to the nearest convenient admission centre.

(3) A member of the police force or welfare officer shall, and any other person may, if he believes that a person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the care and charge of him, so inform a justice on oath. Such justice shall either himself visit and examine the person in respect of whom he has been informed as aforesaid and make inquiry into the case, or by order under his hand direct and authorise some medical practitioner to visit and examine such person and report in writing

writing to such justice his opinion as to the matters of which such justice has been informed as aforesaid. If upon such visit, examination and inquiry by such justice, or upon the report of such medical practitioner it appears to such justice that such person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the control of him, such justice may by order under his hand require any member of the police force to take such person to the nearest convenient admission centre.

(4) The superintendent of an admission centre shall as soon as practicable after the admission of a person to such admission centre cause such person to be examined by two medical practitioners separately and apart from each other.

If either of such two medical practitioners does not recommend that further observation and treatment of such person in a mental hospital is necessary the superintendent shall cause such person to be examined by another medical practitioner.

Where the superintendent is not a person who gave a certificate pursuant to the proviso to subsection one of this section in respect of such person, such superintendent may be one of the medical practitioners aforesaid.

A medical practitioner upon whose certificate or request a person has been admitted to an admission centre shall not make any examination of such person for the purposes of this subsection.

(5) If after examination as aforesaid two medical practitioners recommend that further observation and treatment of such person in a mental hospital or authorised hospital is not necessary, such person shall be discharged from such admission centre.

(6) If after examination as aforesaid two medical practitioners recommend that further observation and treatment in a mental hospital or authorised hospital is necessary, such superintendent shall cause such person to be brought as soon as conveniently may be before a stipendiary magistrate.

Such recommendation shall be in or to the effect of the prescribed form.

(7) Where a medical practitioner making any examination of any person as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon making any recommendation that further observation and treatment of such person is necessary as aforesaid disclose that fact and give particulars thereof in such recommendation.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(8) The superintendent shall give due notice to the nearest known relative or a friend of such person of his intention to have such person brought before a stipendiary magistrate.

(9) The stipendiary magistrate shall upon such person being brought before him hold an inquiry and if he is satisfied after consideration of the recommendations by the medical practitioners as aforesaid and such other evidence as may be placed before him, that such person is a mentally ill person, he shall—

(a) direct that such person be detained in an admission centre, or be admitted to and detained in a mental hospital or authorised hospital, to be specified in such direction for further observation and treatment as a temporary patient for such period not exceeding six months as may be specified therein; or

(b)

(b) order the discharge of such person to the care of any relative or friend who satisfies such stipendiary magistrate that such person will be properly taken care of.

Where pursuant to an inquiry as aforesaid such stipendiary magistrate is not satisfied that such person is a mentally ill person he shall order that such person be discharged from such admission centre.

Such stipendiary magistrate may suspend the execution of any such direction or order for any period not exceeding fourteen days, and may give such directions for the proper care and control of such person in the meantime as such stipendiary magistrate thinks fit.

Where any medical practitioner certifies in writing after examining such person that such person is not fit to be moved from the admission centre in which he is then detained, such person shall not be moved from such admission centre until the same or some other medical practitioner certifies in writing that such person is fit to be moved as aforesaid.

(10) Any certificate given by a medical practitioner for the purposes of paragraph (a) of subsection one of this section shall be in or to the effect of the form set out in Part I of Schedule Two.

Where a medical practitioner giving any certificate as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon giving that certificate disclose that fact and give particulars thereof in such certificate.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(11) Where a medical practitioner is of the opinion that the assistance of a member of the police force is desirable in conveying a person, in respect of whom such medical practitioner has signed any such certificate, to an admission centre he may endorse such certificate in or to the effect of Part II of the form set out in Schedule Two.

Any

MENTAL HEALTH BILL, 1958.

EXPLANATORY NOTE.

THIS Bill replaces the present enactments relating to Lunacy.

Provision is made therein for the admission of mentally ill persons to admission centres, mental hospitals and authorised hospitals, their care and treatment whilst detained therein, their discharge therefrom and the management of their estates.

Provision is also made for the appointment of committees and managers of the estates of persons found by the Supreme Court in its Protective Jurisdiction to be incapable of managing their affairs by virtue of mental illness or mental infirmity.

To impiement the foregoing provisions the appointment of a Director of State Psychiatric Services, superintendents of admission centres, mental hospitals and authorised hospitals, Mental Health Tribunals, welfare officers and official visitors are provided for and matters necessary therefor and supplemental thereto are included in this Bill.

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Any member of the police force to whose notice any such endorsement is brought shall as soon as practicable convey or assist in conveying such person to an admission centre or cause or make arrangements for some other member of the police force to convey or assist in conveying such person to an admission centre.

(12) Any direction or order given by a stipendiary magistrate, and any order given by a justice, pursuant to any of the provisions of this section, shall be in or to the effect of the appropriate prescribed form and shall have effect according to its tenor.

Mental Health Tribunals.

13. For the purposes of this Part of this Act there shall be such number of Mental Health Tribunals as the Minister may constitute.

A Tribunal shall consist of :—

(a) a psychiatrist;

(b) a medical practitioner; and

(c) a barrister or solicitor.

Temporary patients to be brought before Tribunal.

14. (1) If at the expiration of six months from the date of his admission to an admission centre, mental hospital or authorised hospital a temporary patient is still detained in an admission centre, mental hospital or authorised hospital, the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment;

(b) whether such patient should be detained in an admission centre, mental hospital or authorised hospital for further observation and treatment as a temporary patient for such period not exceeding three months as the Tribunal shall specify in such determination; or

(c) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(2) Where a Tribunal has made a determination under paragraph (b) of subsection one of this section and the patient in respect of whom such determination has been made is at the expiration of the period specified in such determination still detained in an admission centre, mental hospital or authorised hospital the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment; or

(b) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(3) Any determination under this section shall be embodied in an order in the prescribed form and any such order shall have effect according to its tenor.

Medical reviews by superintendents.

15. It shall be the duty of the superintendent to medically examine or cause to be medically examined, at such intervals as may be prescribed, all continued treatment patients with a view to determining whether or not their continued detention in an admission centre, mental hospital or authorised hospital is necessary.

PART

PART V.

DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION.

Discharge of patients by superintendent.

16. The superintendent—

(a) may at any time, if in his opinion further observation and treatment of a patient is not required, discharge such patient;

(b) may discharge a patient pursuant to an application in that regard made by such patient or by any relative or friend of such patient, whether or not, in the case of an application made by a relative or friend of such patient, an undertaking in writing has been given to the superintendent by such relative or friend that such patient will be properly taken care of and will be prevented from injuring himself or other persons; and

(c) shall so discharge a patient where an order for the discharge of such patient has been made under this Act by the Tribunal, the Director, a judge, a stipendiary magistrate, or the official visitors.

Appeal against superintendent's refusal to discharge patient.

17. Where the superintendent has refused an application for the discharge of a patient as aforesaid, such patient, or relative or friend of such patient, making such application may, in the case of a temporary patient, if a period of three months has elapsed since the date of admission of such patient to an admission centre, mental hospital or authorised hospital, and in the case of a continued treatment patient, at any time, appeal against such refusal to the Director or any two or more official visitors.

The Director or official visitors to whom such appeal is made shall consider the circumstances of the case and the report on the case obtained from the superintendent (which report the superintendent shall give when required by the Director or any such official visitors) in which his reasons for refusing the application are stated, and may, if he or they think

think fit, order the discharge of such patient from the admission centre, mental hospital or authorised hospital, in which he is detained.

Judge may order discharge of patient.

18. Where a judge receives information upon oath, or has reason or cause to suspect that any person who is not a mentally ill person is detained in any admission centre, mental hospital or authorised hospital such judge may order the superintendent of such admission centre, mental hospital or authorised hospital to bring such person before him for examination at a time to be specified in such order, and if upon the examination of such person, and of such superintendent, and of any medical or other witnesses, it appears to such judge that such person is not a mentally ill person, such judge may order that such person be immediately discharged from such admission centre, mental hospital or authorised hospital.

Patient may be permitted to be absent in certain circumstances.

19. (1) The superintendent may allow a patient to be absent from an admission centre, mental hospital or authorised hospital for such period as the superintendent may think fit, or for such period and at such place and on such conditions as the superintendent may think fit for the benefit of the patient's health.

(2) Where any patient is so allowed to be absent and does not—

(a) at the expiration of such period return to the admission centre, mental hospital or authorised hospital from which he has been so allowed to be absent and a certificate of a medical practitioner certifying that the detention of such patient as a patient is no longer necessary is not received by the superintendent before the expiration of such period, or

(b) comply with any condition upon which he is so allowed to be absent,

such patient may at any time after the expiration of such period or non-compliance with any such condition, as the case may be, be apprehended by a member of the police force and returned to such admission centre, mental hospital or authorised hospital.

(3)

(3) In this section "patient" includes a person detained in a mental hospital pursuant to section thirty-two of this Act.

Transfer of patients.

20. The Director may by order in writing direct the transfer of a patient from the admission centre, mental hospital or authorised hospital in which he is detained to an admission centre, mental hospital or authorised hospital. Any such order for transfer shall be a sufficient authority for the transfer of such patient and for his being received into and detained in the admission centre, mental hospital or authorised hospital to which he is ordered to be transferred.

PART VI.

VOLUNTARY PATIENTS.

Voluntary patients.

21. (1) A person may be admitted to and detained in an admission centre, mental hospital or authorised hospital as a voluntary patient—

(a) where such person is of or above the age of twenty-one years, upon an application in that behalf made by him;

(b) where such person is under the age of twenty-one years, upon an application in that behalf made by the person in whose care and custody he may be.

Such application shall be in writing and be made to the superintendent of such admission centre, mental hospital or authorised hospital.

(2) A superintendent shall, subject to the provisions of this section, discharge a voluntary patient within seven days after an application in writing for his discharge has been made to such superintendent—

(a) where such voluntary patient is of or above the age of twenty-one years, by such voluntary patient or some person on his behalf;

(b)

(b) where such voluntary patient is under the age of twenty-one years, by the person upon whose application he was admitted to and detained in an admission centre, mental hospital or authorised hospital pursuant to subsection one of this section.

(3) No person shall be admitted to an admission centre, mental hospital or authorised hospital under this section unless the superintendent is satisfied that such person is likely to be benefited by his being so admitted for care and treatment as a voluntary patient.

(4) A superintendent may—

(a) grant leave of absence to any voluntary patient;

(b) discharge any voluntary patient;

(c) if the condition of the voluntary patient so requires cause such action to be taken as may be necessary to have such voluntary patient admitted to and detained in an admission centre as a temporary patient.

Master may take charge of estates of voluntary patients in certain circumstances.

22. (1) The Master may take charge of the estate of a voluntary patient—

(a) who is of or above the age of twenty-one years, if he is requested so to do by such voluntary patient;

(b) who is under the age of twenty-one years, if he is requested so to do by the person on whose application such voluntary patient was, pursuant to subsection one of section twenty-one of this Act, admitted to and detained in an admission centre, mental hospital or authorised hospital.

(2) Where, pursuant to this section, the Master takes charge of the estate of a voluntary patient, he shall have in respect thereof all the powers, authorities, duties and functions which he has under Part XI of this Act in respect of the estate of a patient.

PART

PART VII.

MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES.

Procedure where persons charged with offences are found to be mentally ill by a jury or acquitted on the ground of being mentally ill. cf. Act No. 45, 1898, s. 65.

23. (1) If any person indicted for any offence is mentally ill and, upon arraignment, is found to be so by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person is found by the jury, before whom he is tried, to be mentally ill, the judge before whom any such person is brought to be arraigned or tried as aforesaid may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody in such place and in such manner as to such judge may seem fit until he is dealt with as provided by section twenty-four of this Act.

(2) In all cases where it is given in evidence upon the trial of any person charged with any treason, felony or misdemeanour that such person was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill, and such person is acquitted, the jury shall be required to find specially whether such person was at such time mentally ill and to declare whether such person was acquitted by them on the ground that he was at such time mentally ill.

In this subsection "mentally ill" means, in relation to any person charged as aforesaid, so insane as not to be responsible, according to law, for the act or omission the subject of the charge.

(3) If the jury find that such person was at the time the act or omission the subject of the charge was done or omitted to be done mentally ill as aforesaid, the judge before whom such trial is had shall order such person to be kept in strict custody, in such place and in such manner as to such judge seems fit until the Governor's pleasure is known, and thereupon the Governor may give such order for the safe custody of such person during the Governor's pleasure in a prison as the Governor deems fit.

(4) Upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, the Governor, by warrant under his hand, may direct that such person be conveyed to and detained in a mental hospital during the Governor's pleasure.

Persons found to be mentally ill before trial to be sent to mental hospital.

cf. Act No. 45, 1898, s. 66.

24. (1) When any person committed to take his trial for any offence is certified by two medical practitioners to be mentally ill, such certificates to be in or to the effect of the form of Schedule Three, or is upon arraignment found by verdict to be mentally ill, the Minister may direct, by order under his hand in or to the effect of the form of Schedule Four, that such person be removed to, and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall order his removal to a prison in order to be tried for such offence or if he is not to be so tried order that he be discharged.

(2) Such detention for any period shall not operate as a bar to his subsequent indictment and trial for such offence.

Procedure in reference to certain persons under detention appearing to be mentally ill.

cf. *Ibid.* s. 67.

25. If any person while detained in any prison for debt, or in any prison, or other place of confinement, in consequence of any summary conviction or order by any justice or in default of bail, appears to be mentally ill, the Minister may, upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct, by order under his hand, that such person be removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall, if such person remains subject to be continued in custody, order his removal to the prison or other place from where he was taken, or to some other prison or place of confinement, or if such person does not remain subject to be continued in custody order that he be discharged.

26.

Order by Attorney-General for trial of issue whether patient fit to plead if placed upon trial.

cf. Act No. 45, 1898, s. 67A.

26. (1) In any case in which a person charged with an offence for which he has not been tried (in this section referred to as "the person charged") is detained in a mental hospital the Attorney-General, if he is of opinion that the question whether the person charged is fit to plead if put upon his trial should be determined by a jury, may by order under his hand direct that the person charged be removed from such mental hospital to some prison appointed by the Attorney-General and specified in the order.

(2) Such order shall be a sufficient warrant for the removal of the person charged from the hospital in which he is detained and for his detention in the prison appointed by the Attorney-General and specified in the order.

(3) The Attorney-General may further order that a jury of twelve persons be empanelled for trial of an issue whether the person charged is fit to plead if placed upon his trial.

(4) The said issue shall be tried at a time and place appointed by the Attorney-General before a judge of the Supreme Court or a chairman of Quarter Sessions.

(5) The governor of the prison in which the person charged is detained shall procure the attendance of the person charged at the time and place appointed for the trial of the said issue.

(6) At the request of the Clerk of the Peace the Sheriff shall summon thirty-six persons, chosen by him from the list of jurors in the jurors' list for the jurors' district within which the place appointed for the trial of the said issue is situated, to attend at the time and place appointed for the trial of the said issue.

(7) A jury of twelve persons shall be empanelled from the jurors in attendance at the court and the said issue shall be tried in accordance with the procedure adopted at a criminal trial where upon the trial of an indictment a question is raised whether the accused is fit to plead. The judge presiding at the trial shall have power to make any order including a power of postponement and give any directions which

which in his opinion are necessary for the trial of the issue. The jurors empanelled to try the issue shall be sworn in such manner as the court shall direct.

(8) If the jury find that the person charged is not fit to plead he shall be returned to the hospital from which he was removed.

(9) If the jury find that the person charged is fit to plead he shall be returned to prison.

(10) If a bill is found against him he shall be placed upon his trial.

(11) If a bill is not found against him a certificate shall be issued by the Attorney-General to the judges of the Supreme Court in accordance with the provisions of section three hundred and fifty-eight of the Crimes Act, 1900, as amended by subsequent Acts, and any of the said judges may thereupon direct the gaoler in whose custody the person charged may be to discharge him from custody.

(12) At the trial of the said issue the person charged shall be entitled to give evidence on oath or to make an unsworn statement.

(13) If the jury find that the person charged is fit to plead and he is placed upon his trial he shall be entitled to set up the defence that he was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill.

In this subsection "mentally ill" has the meaning ascribed thereto in subsection two of section twenty-three of this Act.

Procedure on certain prisoners appearing to be mentally ill.

cf. Act No. 45, 1898, s. 68.

27. If any person while imprisoned in any prison, under any sentence of hard labour or imprisonment imposed otherwise than on the conviction or order of justices appears to be mentally ill the Minister may upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct by order under his hand in or to the effect of the form of Schedule Four, that such person be removed

removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall if such person remains subject to be continued in custody, order his removal to the prison from where he was taken, or to some other prison, or if such person does not remain subject to be continued in custody order that he be discharged.

Procedure on prisoners under sentence of death appearing to be mentally ill. cf. Act No. 45, 1898, s. 69.

28. If it is made to appear to the Minister by any means whatsoever that there is good reason to believe that any prisoner in confinement under sentence of death is then mentally ill, the Minister may appoint two or more medical practitioners to inquire into the mental health of such prisoner, and if on such inquiry such prisoner is found to be then mentally ill, the fact shall be certified in writing by such practitioners to the Minister, and on receipt of such certificate the Minister may, by order under his hand, direct that such prisoner be removed to and detained in a mental hospital until such prisoner is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall order that such person be removed to any prison or other place of confinement to undergo his sentence of death or to be dealt with according to law, as if no such order for his removal to and detention in a mental hospital had been made.

Governor may liberate on conditions. cf. *Ibid.* s. 72.

29. When any person is ordered to be kept in custody during the Governor's pleasure, any order made by the Governor in relation to the custody of such person may be renewed and varied from time to time or revoked; and the Governor may permit any such person or any person conveyed to and detained in a mental hospital pursuant to a direction by the Governor, not being a person under conviction and sentence, to be liberated from custody or such mental hospital, upon such terms and conditions as the Governor may think fit; and if any such term or condition is broken, such person may be retaken and dealt with as provided in section thirty of this Act.

30.

Escaped mentally ill persons detained under this Part may be recaptured. cf. Act No. 45, 1898, s. 73.

30. In case of the escape of any person detained in a mental hospital pursuant to the provisions of this Part of this Act he may be retaken at any time by the superintendent, or any officer, servant or other person employed therein, or any member of the police force, or any other person authorised by the Minister or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised and shall be conveyed and admitted to and detained in such hospital.

Penalties for assisting or permitting escape. cf. *Ibid.* s. 74.

31. Any person who rescues any person being conveyed to or detained in any mental hospital pursuant to the provisions of this Part of this Act, and the superintendent or any officer, servant, or other person employed in any such hospital who, through wilful neglect or connivance, permits any person so detained therein pursuant to the provisions of this Part of this Act to escape therefrom, or conceals or abets or connives at any such escape, or who carelessly allows any such person to escape therefrom, shall be guilty of an offence against this Act and shall be liable to imprisonment for a period not exceeding three years or a penalty not exceeding five hundred pounds or both such imprisonment and penalty.

Persons attempting to commit suicide and mentally ill not triable for the offence. cf. *Ibid.* s. 75.

32. Any person committed to take his trial for having attempted to commit suicide who is certified by two medical practitioners in or to the effect of the form of Schedule Three to be mentally ill shall forthwith be sent to and detained in a mental hospital and such person, when certified by the superintendent and Director, or by the superintendent and an official visitor, to be not mentally ill, shall be discharged from such hospital, and shall not be put upon his trial or be liable to any charge or indictment for having attempted such act of suicide.

Security conditions for persons detained in mental hospitals under this Part.

33. (1) Any person detained in a mental hospital pursuant to the provisions of this Part of this Act shall be subject to such security conditions as the Director may deem necessary.

(2)

(2) The Director may by order in writing direct the transfer of a person detained in a mental hospital pursuant to this Part of this Act to any other mental hospital. Any such order for transfer shall be a sufficient authority for the transfer of such person and for his being admitted to and detained in the mental hospital to which he is ordered to be transferred.

PART VIII.

WELFARE OFFICERS.

Appointment and duties of welfare officers.

34. (1) For the purposes of this Act the Governor may appoint such welfare officers as he deems necessary.

(2) The powers, authorities, duties and functions of a welfare officer shall be :—

(a) on the direction of a superintendent to escort and convey or assist in escorting and conveying a patient to a mental hospital, where such patient has been granted leave of absence from such mental hospital and such patient's return is desirable on account of a breakdown in his mental health;

(b) to escort and convey or assist in escorting and conveying patients from a mental hospital to another mental hospital or to a public hospital;

(c) to visit patients, who are on leave of absence from mental hospitals, or their relatives or friends for the purpose of advising them on matters pertaining to the welfare of such patients;

(d) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon him by or under this Act or as may be assigned to him by the Director.

PART

PART IX.

Official Visitors.

Appointment of official visitors.

35. (1) The Governor may appoint for every admission centre, mental hospital or authorised hospital, two or more official visitors, one of whom shall be a medical practitioner and one a stipendiary magistrate, barrister-at-law, or solicitor.

(2) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of an official visitor and such official visitor shall not in his capacity as such be subject to the provisions of any such Act.

(3) No person of or above the age of seventy years shall be appointed as an official visitor. An official visitor shall cease to hold office as such on the day upon which he attains the age of seventy years.

(4) Any two or more official visitors, one being a medical practitioner, shall visit the place for which they are appointed official visitors once at least every month with or without any previous notice, and at such hours of the day or night, and for such length of time as they think fit, and also at such other times as the Minister may direct.

(5) Any person who has any pecuniary interest, directly or indirectly, in an authorised hospital shall not be or act as an official visitor for any authorised hospital and no official visitor shall sign any certificate or request for the admission of any person to, or attend professionally upon, any patient in any admission centre, mental hospital or authorised hospital.

(6) Such official visitors, when visiting such admission centre, mental hospital or authorised hospital, shall, so far as practicable, inspect every part of the same and make such inquiries as they may deem necessary as to the care, treatment and control of the persons detained therein.

Duties of superintendents on visits by official visitors.

36. (1) The superintendent shall allow the official visitors visiting an admission centre, mental hospital or authorised hospital to have access to and inspect every part thereof and shall permit them to see and interview every person detained therein

therein, and shall give full and true answers to the best of his knowledge to all questions which the official visitors may ask in reference to the said admission centre, mental hospital or authorised hospital, and the persons detained therein, and shall produce to the official visitors such registers, books, records, orders, certificates, papers and other documents relating to the admission and discharge, care, treatment and control of persons detained therein, and furnish all such returns relating to any of the matters aforesaid, as may be required by such official visitors.

(2) The official visitors shall—

(a) examine and sign all registers, books and records produced to them in accordance with the foregoing provisions;

(b) on every visit to an admission centre, mental hospital or authorised hospital enter in the official visitors' book the fact of their visit with such observations as they think fit; and

(c) transmit to the Minister as soon as practicable after each such visit a report upon their visit containing such information as they deem necessary.

PART X.

PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES.

Constitution of Court. Act No. 45, 1898, s. 101.

37. The Court shall, except on appeal as hereinafter provided, be holden by the Chief Judge or a judge in Equity, or by any other judge sitting for the Chief Judge in Equity during his absence from Sydney or illness or at his request:

Provided that any such judge may sit in chambers to determine all such matters as in his opinion may advantageously and with propriety be heard in chambers; and such judge when so sitting shall have the same powers and jurisdiction as in open court.

38. Where it is proved to the satisfaction of the Court that a person is mentally ill and incapable of managing his affairs, the Court may make a declaration to that effect, and may direct a reference to the Master to make inquiries concerning the property of such person, and may make all proper orders for rendering the property of such person, or the income thereof available for the payment of his debts and for the maintenance or benefit of himself and his family, and for carrying on his trade or business (if any), and may, if necessary, appoint, either with or without security, a committee of his estate, and also when desirable appoint a committee of his person.

Declarations of Court as to persons being mentally ill.
cf. Act No. 45, 1898, s. 102.

39. (1) Where it is proved to the satisfaction of the Court that any person is, through mental infirmity, arising from disease or age, incapable of managing his affairs, the Court may make all proper orders for rendering the property and income of the said person available for the payment of his debts and for the maintenance and benefit of himself and his family; and may make orders for the care and management of his property in all respects as if he were a protected person; and may, if necessary, appoint a manager, either with or without security, to undertake the care and management of his property under the order and direction of the Court.

Persons incapable of managing their affairs.
cf. *Ibid.* s. 103.

(2) The manager shall, subject to the said orders and directions and to the rules of Court, have the same powers and be subject to the same obligations and control as a committee, appointed under section thirty-eight of this Act, of the estate of a protected person, and the powers and provisions contained in this Act relating to the management and administration of the estates of protected persons shall apply to the estates of incapable persons.

40. Where it is proved to the satisfaction of the Court that any protected person or incapable person has recovered his mental health and is capable of managing his affairs, the Court may make a declaration to that effect, and may make all proper orders to give effect to such declaration, and to release the property of such person from the control of the Court

Superseding orders, etc. when person has recovered.
cf. *Ibid.* s. 104.

Court or the manager, as the case may be, and to discharge the committee of his estate and the committee (if any) of his person or the manager, as the case may be.

Mode of application. cf. Act No. 45, 1898, s. 105.

41. Applications under sections thirty-eight, thirty-nine and forty of this Act shall be made, and evidence by affidavit given in support thereof, in such manner as is prescribed by rules of Court:

Provided that every deponent may be cross-examined upon his affidavit either at the hearing or at such time and place as the Court may direct, and at such hearing the Court may receive or require the oral evidence of witnesses and such other proofs as may be deemed necessary.

Service of process. cf. *Ibid.* s. 106.

42. Notice of any applications under sections thirty-eight, thirty-nine and forty of this Act and of the evidence by affidavit to be given in support thereof shall be given to such persons, in such manner and within such time as may be prescribed by rules of Court.

Court may order inquiry before a jury. cf. *Ibid.* s. 107.

43. The Court in any case, instead of determining whether or not the person whose mental health is the subject of inquiry is mentally ill and incapable of managing his affairs, or is through mental infirmity, arising from disease or age, incapable of managing his affairs, may order that question to be determined by a jury; and thereupon the like proceedings for procuring the return of such jury shall be had and taken as provided by any law for the time being in force for the return of juries in the Supreme Court, and in every proceeding before a jury pursuant to this section the number of the jury shall be four, unless the Court order a jury of twelve.

Inquiries before jury. cf. *Ibid.* s. 108.

44. Where any such inquiry before a jury is ordered, the Court shall direct the question to be tried before a judge or the Master, or a commissioner specially appointed, who shall while so acting have for the purpose of the inquiry all the powers of the Supreme Court; and the trial of every such question and the verdict thereon shall be had and dealt with in all respects in accordance with any law for the time being in force relating to the trial of issues out of the Supreme Court.

After verdict Court may make declarations and orders.

45. When the verdict of the jury has been returned, unless a new trial is granted, the Court may make such declaration and orders as mentioned in sections thirty-eight and thirty-nine of this Act, as the case may require.

cf. Act No. 45, 1898, s. 109.

Examination of person whose mental health is in question.

46. On the hearing of any application under section thirty-eight or thirty-nine of this Act the person whose mental health is in question shall be examined by the Court; and on the trial of any such question as abovementioned there shall be a like examination by the jury before they consult as to their verdict, and every such examination shall take place in open court or in private, as may be deemed expedient:

cf. *Ibid.* s. 110.

Provided that, if it appears to the Court to be unnecessary or inexpedient that such person should be examined by the Court, or the jury, the Court may, in lieu of the examination aforesaid, direct the Master to personally examine the said person and report on such examination, or may dispense with any examination whatever.

Construction of references to commission of Lunacy and certain like expressions.

47. Where in any Act or rule of Court or instrument, reference is made to a commission of Lunacy, or a writ in the nature of a writ de lunatico inquirendo, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission, the application and declaration or orders thereon in sections thirty-eight and forty of this Act mentioned, as the case may require, shall be taken to be intended by or comprehended in such reference.

cf. *Ibid.* s. 111.

Persons found mentally ill in places outside N.S.W.

48. When the Court is satisfied that any person has been found mentally ill and incapable of managing either himself or his affairs or both by any commission de lunatico inquirendo, or other legal inquiry in any part of the British Commonwealth of Nations outside New South Wales or in any other country to which the Governor by proclamation published in the Gazette extends the provisions of this section, the Court may direct a copy of the inquisition or finding on such commission or inquiry, duly certified by the proper officer of the Court or other authority into which such inquisition or finding has been returned

cf. *Ibid.* s. 112.

returned, to be filed of record in the Court; and may thereupon appoint a committee of such person's estate or person, or both, and may give such other orders in respect of the management of his estate or person as it deems fit; and such committee shall have the same duties, powers, and liabilities as if he were the committee of the estate or person of a protected person.

Court may order costs. cf. Act No. 45, 1898, s. 113.

49. The Court may make such order as to the costs, charges, and expenses of and incidental to any proceeding authorised by this Act as the Court thinks proper, and every such order shall have the same effect as orders for the payment of money made by the Supreme Court in its equitable jurisdiction.

Appeal. cf. *Ibid.* s 114.

50. (1) There shall be an appeal to the Full Court of the Supreme Court from every order or decision made under this Act before or by a single judge in such manner as may be prescribed by rules of Court.

(2) Every person so appealing shall within fourteen days from the time of filing such appeal, either—

(a) deposit with the Master such sum, not exceeding one hundred pounds, as the Master directs; or

(b) deposit with the Master a bond of two persons to be approved of by him, in such sum, not exceeding one hundred pounds, as he directs, conditioned to be void if the appellant prosecutes his appeal with all due diligence, and pays such costs as the Court adjudges.

(3) Such sum of money or bond, as the case may be, shall be held by the Master, subject to the order of the Court.

(4) If such sum of money or bond is not deposited as aforesaid within the period hereby provided, such appeal shall be deemed to have been abandoned.

PART

PART XI.

MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS.

Division 1.—*General Powers and Duties of Master.*

Master in Protective Jurisdiction of Supreme Court.

51. There shall be a Master in the Protective Jurisdiction of the Supreme Court, who shall be the person for the time being holding the office of Master in Equity.

cf. Act No. 45, 1898, s. 115.

The Governor may appoint a Deputy Master. The Deputy Master may exercise all the powers conferred and shall perform all the duties imposed upon the Master by any Act or by any rule or order of the Court. During the illness or absence of the Deputy Master, the Court or the Chief Judge or a judge in Equity may authorise the Chief Clerk in the Protective Jurisdiction of the Supreme Court to exercise all the powers conferred and perform all the duties imposed upon the Master.

Administration of estates of certain persons.

cf. *Ibid.* s. 116.

52. (1) Subject to rules of Court, the jurisdiction and powers of the Court in respect of the administration and management of the estates of all protected persons and incapable persons may be exercised by the Master; and every order made by the Master under the authority hereby conferred on him shall take effect, unless rescinded or varied by the Court; and the Master shall have and execute all the powers and duties hereby or under the authority hereof vested in and imposed upon him; and subject to and in accordance with the regulations and the rules of Court and to any special order of the Court, the Master shall undertake the general care, protection, and management, or supervision of the management, of the estates of all patients, protected persons and incapable persons; and he shall supervise and enforce the performance of the obligations and duties of all committees under this Act, and shall take care of, collect and administer, under the provisions of this Act, the property and estates of all patients.

(2)

(2) The Master may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stockbroker or any other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate of any patient, protected person or incapable person.

(3) The Master shall not be responsible for the default of any such agent if employed in good faith.

Expenses incurred to be paid out of estate.

cf. Act No. 45, 1898, ss. 117, 118.

53. All expenses incurred by or on behalf of the Crown, in the care, protection, and management, or in the supervision of the management, under this Act, of the estate of any patient, protected person or incapable person, may be charged by the Master against and shall be paid out of and recoverable from such estate or may be paid by the Master out of any money of such patient, protected person or incapable person that comes to his hands, or may be recovered by him on summary application to the Court, whether or not such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Percentages.

cf. *Ibid.* s. 119.

54. There shall be paid to the Master a percentage at such rate not exceeding five pounds per centum per annum as may be fixed by rule of Court on the clear annual income of every patient, protected person and incapable person; and the said percentage shall be charged upon and payable out of the estate of such patient, protected person or incapable person whether or not, before payment, such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Master to have all necessary powers of inquiry, taking evidence, etc.

cf. *Ibid.* s. 120.

55. (1) The Master may in the execution or performance of his powers, authorities, duties and functions, and also in the prosecution of all inquiries and matters which may be referred to him under this Act, summon persons before him and administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit, and take recognizances and require the production of books, papers, accounts,

accounts, and documents; and every person so summoned shall be bound to attend as required by the summons and give evidence before the Master in like manner as persons summoned before him in his equity jurisdiction are bound to attend and to give evidence; and the Court may by any order (general or particular) refer to the Master any inquiries under the provisions of this Act relating to the person and estate of any person.

(2) Every person who does not appear pursuant to such summons (having had his reasonable expenses paid or tendered to him at the time of service of such summons), or does not assign some reasonable excuse for not so appearing, or appears and refuses to be sworn or examined shall, for every such neglect or refusal, be liable to a penalty not exceeding ten pounds.

Witnesses may be cross-examined orally.

cf. Act No. 45, 1898, s. 121.

56. Every person giving evidence by affidavit shall be liable to oral cross-examination by or before the Master upon his affidavit, and after cross-examination may be re-examined orally by or on behalf of the person filing the affidavit; and every person giving evidence by affidavit shall be bound to attend before the Master to be so cross-examined and re-examined upon receiving due and proper notice and payment or tender of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena ad testificandum before the Master; and the expenses attending on such cross-examination and re-examination shall be paid in such manner and by such person as the Master directs.

Master may issue advertisements.

cf. *Ibid.* s. 122.

57. The Master may cause to be issued such advertisements as may to him seem expedient with reference to the subject matter of a proposed inquiry or with a view to the efficient discharge of his duties as Master under this Act with regard to the estate and property of any person.

Master to approve of and to enforce security to be given by committee of estate.

cf. *Ibid.* s. 123.

58. The Master shall approve on behalf of Her Majesty of the security to be given by the committee of the estate of any person under order of the Court pursuant to this Act, and it shall be the duty of the Master to see that the conditions of all bonds and recognizances heretofore or hereafter to be given or entered into by the committee of the estate

estate or other persons in the matter of the estate shall be faithfully and regularly observed and performed, and immediately to report to a judge any breach or non-performance of any of such conditions; and thereupon such judge may cause such bond or recognizance to be forfeited or estreated, and such forfeiture or estreat shall be enforced and effected in the manner provided by any law now or hereafter to be in force relating to the estreat of recognizances entered into to Her Majesty.

Division 2.—Powers and Duties of Master in Respect to Estates of Patients.

Powers of Master in respect of estates of patients.

cf. Act No. 45, 1898, s. 124.

59. The Master shall have in respect of the property and estate of any patient, in addition to the general powers conferred upon him in Division 1 of this Part of this Act, all the like powers and authorities, subject to the like limitations, as are hereinafter, in Division 3 of this Part of this Act, given to the committee of the estate of a person, and also the powers hereinafter mentioned.

Power to apply property of certain acquitted persons for their benefit.

cf. *Ibid.* s. 125.

60. Where any person has on the trial of any information been acquitted as referred to in subsection two of section twenty-three of this Act or has upon arraignment upon a criminal charge been found to be mentally ill, the Sheriff shall report the fact to the Master, who shall thereupon make inquiry respecting the property of such person, and the Court may, on being satisfied that such person is still a mentally ill person and is still in confinement, make any orders with respect to the property of such person 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.

Master's powers as to property of patients.

cf. *Ibid.* s. 126.

61. The Master shall have the management and care of the property of every patient, and in addition to other powers and duties necessary and incident to such management and care,

care, may exercise the following powers and perform the following duties with respect to the estate of every patient, that is to say, he may : —

(a) receive moneys, rents, incomes, and profits of real and personal property;

(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 one thousand 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, suits, and other proceedings on behalf of the patient;

(j) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

62. (1) The Master may apply to the Court in such manner as may be prescribed by rules of Court, for directions with respect to the exercise of any of the powers over the estate of a patient which the Court may exercise, or order a committee to exercise, over the estate of any person, under Division 3 of this Part of this Act.

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

Act No. 45, 1898, s. 127.

(2) The Court 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.

63. (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 not mentally ill, and may, in the name and on behalf of the patient, execute and sign deeds, instruments, transfers of shares, receipts, releases, and other documents, which shall be as effectual as if executed and signed by the patient himself while not mentally ill, 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 is a patient or not.

Master may execute instruments on behalf of patient.

cf. *Ibid.* s. 128.

(2) 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 is 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.

64. (1) If any real or personal property of a patient is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient by any person, the Master may as such Master claim and recover possession of such property or damages for the conversion or injury thereof,

Summary proceedings for protection of property of patients.

cf. *Ibid.* s. 129.

thereof, or payment of the said sum by summary proceeding on complaint before a judge who is hereby authorised and required on proof to his satisfaction of the said cause of complaint to make an order requiring the defendant to give up possession of such property, or to pay reasonable damages to be fixed by the said order for the conversion or injury thereof, or to pay the sum so due as aforesaid, and in default of compliance by the defendant with the said order, to order in and by the same or any subsequent order that the defendant be committed to prison for any period not exceeding six months.

(2) Such judge may in any complaint under this section make such order as to costs as he thinks fit, and every order under this section shall have the same effect, and may be enforced in like manner as any judgment, decree, or order of the Supreme Court in its jurisdiction at law or in equity.

Payments to consolidated revenue.

cf. Act No. 45, 1898, s. 130.

65. (1) 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 may from time to time appoint, all money paid to him for the maintenance of any patient, and all percentages.

(2) 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.

(3) A separate current 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.

cf. *Ibid.* s. 131.

66. The Master may apply moneys standing to the credit of the current account of a patient in 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)

(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 not a mentally ill person;

(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 taking up of the rights to issues of new shares to which a patient becomes entitled by virtue of his existing shareholdings;

(g) the investment, in manner hereinafter provided, of money not presently required for the above purposes;

(h) the payment to a patient or any person in accordance with the provisions of section seventy-one or seventy-three of this Act:

Provided that the Master may report to and apply for the advice and directions of the Court upon any of the matters aforesaid; and the Court 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 to be made, and notices given as may be deemed advisable, and may make such orders in the premises as may be thought proper.

Investment on purchase of land. cf. Act No. 45, 1898, s. 133.

67. The Master may, with the leave of the Court, to be obtained in such manner as is or may from time to time be prescribed by rules of Court, invest any money unapplied as aforesaid in the purchase of land, if such purchase appear to the Court to be desirable for the purpose of protecting the estate of the patient from injury or deterioration in value, of increasing the value or facilitating the sale of other lands of the estate, or of providing a home for the patient or his dependants; and the Court may, on the hearing of the application, deal with the same ex parte, or require notice to be served on any person.

68.

Common fund.

cf. Act No. 19, 1913, s. 36A.

68. (1) Subject to this Act balances to the credit of all current accounts in the trust fund at the commencement of this Act and at any time thereafter shall be one common fund and shall be available for investment as provided in this Act.

(2) Interest received from investments from the common fund shall be credited to an account styled "Interest Account" and shall be allocated therefrom as provided in this section.

The costs and expenses of such allocation shall be a charge on the common fund.

(3) Interest shall be allowed on all balances forming part of the common fund, and shall be credited at such rate or rates and at such time or times as the Master may determine.

Investment of common fund and moneys unapplied under s. 66.

cf. *Ibid.* s. 36D.

69. Moneys unapplied as aforesaid and moneys in the common fund may be invested—

(a) in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts; or

(b) on deposit with the Colonial Treasurer for a period or periods not exceeding twelve months in any one case, which deposit shall bear interest at the prescribed rate and any such deposit may be renewed from time to time for a like period and subject to the like conditions.

Withdrawal from the common fund.

cf. *Ibid.* s. 36E.

70. (1) The Master may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund and standing to the credit of the current account of any patient for any purpose of or relating to the exercise and discharge by the Master of his powers, authorities, duties and functions in the care, protection and management of the estate of such patient.

(2) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund.

71.

Payment over of estate before discharge in certain cases. cf. Act No. 45, 1898, s. 134.

71. (1) If any patient is permitted to be absent from an admission centre, mental hospital or authorised hospital under the provisions of this Act, the Master may, in his discretion, pay over to the patient, or to any person on his behalf who gives 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 his current account 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.

(2) 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.

Sale, etc. by patient before his discharge may be set aside. cf. *Ibid.* s. 135.

72. 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 may, on application being made by the Master in such manner as is or may from time to time be prescribed by rules of Court, and on notice being given to such persons as the Court 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 a mentally ill person at the time when he made or executed the transfer, sale, alienation, charge, or lease.

Payments to discharged patients and to personal representatives of deceased patients. cf. *Ibid.* s. 136.

73. (1) 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 his current account 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, documents and chattels forming part of his estate.

(2) 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.

(3)

(3) The Master, in his discretion, may continue to have the care, protection and management of the estate of a discharged patient until the discharged patient obtains an order of the Court or the Master is satisfied that the discharged patient is capable of managing his own affairs.

(4) The Master, in his discretion, may after the death of a 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, documents 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 that probate of the will or letters of administration have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Unclaimed personal effects and moneys of patient.

cf. Act No. 45, 1898, s. 137.

74. (1) All personal effects in the hands of the Master belonging to a patient, and not claimed within two years from the date of the death or 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.

(2) All moneys standing to the credit of a patient in his current account in the trust fund at the end of six years from the date of the death or discharge of that patient shall be carried to and form part of the consolidated revenue.

(3) Nothing herein contained shall affect the right of a person under disability by reason of his being an infant, a mentally ill person or absent 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.

cf. *Ibid.* s. 138.

75. (1) 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.

(2)

(2) On the discharge or death of a patient, he or his legal personal representative (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 not a mentally ill person.

Relatives, etc., may agree for maintenance of patient. cf. Act No. 45, 1898, s. 139.

76. The Master may agree with any relative, guardian, or friend of any patient detained in an admission centre, mental hospital or authorised hospital for his maintenance while detained therein, and such relative, guardian, or friend shall be entitled to be reimbursed all necessary sums expended in such maintenance and interest thereon out of any real or personal property of such patient.

Owner, etc., of ship or aircraft liable for maintenance of certain mentally ill persons. cf. *Ibid.* s. 140.

77. (1) If within sixty days after the arrival of any ship or aircraft in New South Wales the Master has reasonable cause to believe that a passenger or member of the crew arriving by that ship or aircraft is a mentally ill person and has become, or is likely to become, a charge upon the public as a patient in an admission centre or mental hospital, it shall be lawful for the Master thereupon to require the owner, charterer, agent, or master of that ship or aircraft to execute, with two sufficient sureties, jointly and severally, a bond to Her Majesty in such sum as the Master may determine, not exceeding three thousand pounds, conditioned to pay to the Master the maintenance of that passenger or member of the crew in such admission centre or mental 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 of the ship or aircraft, subject to the approval of the Master, to return such passenger or member of the crew to the place whence he was transported.

(2) 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.

(3)

(3) No bond shall be required when the passenger or member of the crew is, at the date of the arrival of the ship or aircraft, domiciled in New South Wales; but the onus of proving such domicile as aforesaid shall be upon the said owner, charterer, agent, or master of the ship or aircraft.

Neglect or refusal to execute bond.

78. If the said owner, charterer, agent, or master of the ship or aircraft 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 three thousand pounds, to be recovered summarily before a stipendiary magistrate.

cf. Act No. 45, 1898, s. 141.

Cost of maintenance of patient may be recovered.

79. The cost to the Crown of the maintenance of a patient shall constitute a debt due to the Crown and shall be recoverable accordingly from the patient or his estate:

Provided that if the Master considers that undue hardship would be occasioned by the enforcement of such debt or other circumstances so warrant he may in his discretion either forego the debt altogether or accept a smaller sum in satisfaction thereof.

Court may direct Master to report as to mental health of any patient.

80. The Court may direct the Master to personally examine any patient, and take evidence and call for information as to the mental health of such patient, and report thereon to the Court, and the Court may make orders for and with respect to—

cf. *Ibid.* s. 148.

(a) the appointment of a guardian or otherwise for the protection, care, and management of the person or of the estate, or of the person and estate, of any patient who by any such report is found to be a mentally ill person; such guardian, according to the nature of his appointment, to have the same powers and authorities, and be subject to the same control and liabilities, as a committee of the person and estate of a protected person appointed under this Act;

(b) the appointment of a receiver or otherwise for the protection, care and management of the estate of such patient; such receiver to have the same powers and

and authorities and be subject to the same control and liabilities as a receiver of the estate of a protected person appointed under this Act;

(c) the application of the income of such patient or a sufficient part thereof for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such patient, and of or in connection with the said examination by the Master and the obtaining of such orders by the Court;

(d) the investment or other application for the purpose of accumulation or otherwise of the surplus (if any) of such income as lastmentioned for the use of such patient, his wife, or children as to the Court may seem fit.

Division 3.—*Management of Estates of Certain Persons not being Patients.*

81. (1) The Court may order that any property of a protected person be sold, charged, mortgaged, dealt with, or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to all or any of the purposes following:— Power to raise money for certain purposes. cf. Act No. 45, 1898, s. 149.

(a) payment of such protected person's debts or engagements;

(b) discharge of any incumbrance on his property;

(c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit;

(d) payment of or provision for the expenses of his future maintenance;

(e) payment of the costs of any proceeding under this Act, or of any sale or other disposition made under this Act.

(2) In case of a charge or mortgage being made under this Act for the expenses of future maintenance the Court may direct the same to be payable, either contingently, if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as the Court thinks expedient.

82. The Court may by order authorise and direct the committee of the estate of a protected person to do all or any of the following things :—

Powers exercisable by committee under order of Court.

cf. Act No. 45, 1898, s. 150.

(a) sell any property belonging to such protected person;

(b) make exchange or partition of any property belonging to such protected person, or in which he is interested, and give or receive any money for equality of exchange or partition;

(c) carry on any trade or business of such protected person;

(d) grant leases of any property of such protected person for building, agricultural or other purposes;

(e) surrender any lease and accept a new lease;

(f) accept a surrender of any lease and grant a new lease;

(g) execute any power of leasing vested in such protected person having a limited estate only on the property over which the power extends;

(h) perform any contract relating to the property of such protected person entered into by him before he became a protected person;

(i) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to such protected person;

(j)

(j) exercise any power or give any consent required for the exercise of any power where the power is vested in such protected person for his own benefit, or the power of consent is in the nature of a beneficial interest in such protected person;

(k) sequestrate the estate of such protected person under the provisions of the bankruptcy laws;

(l) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts;

(m) bring and defend actions, suits, and other proceedings on behalf of such protected person.

Property exchanged and renewed lease to be to same uses as before.

cf. Act No. 45, 1898, s. 151.

83. Any property taken in exchange and any renewed lease accepted pursuant to this Act on behalf of a protected person under the powers of this Act, shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

Extent of leasing power.

cf. *Ibid.* s. 152.

84. (1) The power to authorise leases of a protected person's property under this Act shall extend to property of which the protected person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the protected person, and all persons entitled in remainder and reversion expectant upon the estate tail of the protected person including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the protected person shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the protected person or his committee would have had.

(2) Leases authorised to be granted and accepted by or on behalf of a protected person under this Act may be for such number of lives or such term of years at such rent and subject to such reservations, covenants, and conditions as the Court may order.

(3)

(3) Fines or other payments on the renewal of leases may be paid out of the estate of the protected person, or charged with interest on the leasehold property, as the Court may order.

Interest in property of certain persons not to be altered.
cf. Act No. 45, 1898, s. 153.

85. (1) Any patient, protected person or incapable person, his heirs, next of kin, devisees, legatees, executors, administrators, and assigns shall have the same interest in any moneys or other property arising from any sale, mortgage, charge, disposition of any property or other dealing therewith under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made, and the surplus moneys or other property shall be of the same nature as the property sold, mortgaged, charged, disposed of or dealt with.

(2) Moneys received for equality of partition and exchange, and all fines, premiums, and sums of money received upon the grant or renewal of a lease where the property, the subject of the partition, exchange, or lease was real estate of the patient, protected person or incapable person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate, except in the case of fines, premiums and sums of money received upon the grant or renewal of leases of which the patient, protected person or incapable person was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the patient, protected person or incapable person.

(3) In order to give effect to the foregoing provisions of this Act the Court may make such orders and direct such conveyances, deeds, and things to be executed and done as it thinks fit.

86.

Expenses of improvements may be charged on estate. cf. Act No. 45, 1898, s. 154.

86. (1) The Court may order that the whole or any part of any moneys expended or to be expended under its order for the permanent improvement, security, or advantage of the property of a protected person or of any part thereof, shall with interest be a charge upon the improved property or any other property of the protected person, but so that no right of sale or foreclosure during the lifetime of the protected person shall be conferred by the charge, and the interest shall be kept down during his lifetime out of the income of his general estate as far as the same is sufficient to bear it.

(2) The charge may be made either to some person advancing the money, or, if the money is paid out of the protected person's general estate to some person as a trustee for him as part of his personal estate.

Court may order certain estates to be applied for maintenance. cf. *Ibid.* s. 155.

87. Where the net amount or net estimated value of the property of any protected person does not exceed the sum of five hundred pounds, the Court may order the amount of the property or the produce thereof when realised to be paid or transferred to some fit person, to be applied in or towards the maintenance of the protected person, either at the discretion of such fit person, or in such manner, and subject to such control as the Court may direct, and for the purpose of giving effect to any such order the Court may order any real estate or other property whatsoever of the protected person to be sold, and a valid conveyance or transfer thereof to be executed or made by such fit person as it shall direct.

Application of income for temporary maintenance. cf. *Ibid.* s. 156.

88. (1) Where it appears to the Court that there is reason to believe that the mental illness of any protected person is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of such protected person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income, or of ready money belonging to the protected person, and standing to his account with a banker

banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as it may think proper for the temporary maintenance of the protected person and the members of his immediate family who are dependent upon him for maintenance, and may order the payment of any such sum of money as aforesaid, or any part thereof, to some fit person, and may direct the same to be paid to such fit person accordingly, and when received to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid.

(2) The receipt in writing of the person named in the order to whom payment is to be made for any moneys payable to him by virtue thereof shall effectually discharge the banker, agent, or other person paying the same from the moneys therein respectively expressed to be received.

(3) The person so receiving any moneys by virtue of this section shall pass an account thereof before the Master when required.

89. Where a person, being a member of a partnership, becomes a protected person the Court may, by order, dissolve the partnership.

Court may dissolve partnership.

cf. Act No. 45, 1898, s. 157.

90. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of a protected person, execute, make, and do all such conveyances, deeds, transfers, and things for giving effect to any order under this Act as the Court directs; and every such conveyance, deed, transfer, and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

Power to carry orders into effect.

cf. *Ibid.* s. 158.

91.

Committee may act as trustee or guardian in certain cases.

cf. Act No. 45, 1898, s. 159.

91. Where a power is vested in a protected person in the character of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the committee of the estate, in the name and on behalf of the protected person, under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

Appointment of new trustees by committee.

cf. *Ibid.* s. 160.

92. Where under this Act the committee of the estate, under order of the Court, exercises in the name and on behalf of a protected person a power of appointing new trustees vested in him the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same rights and powers as they would have had if the order had also been made by the Supreme Court under any law for the time being in force relating to trusts; and the Court may in such case where it seems to be expedient make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of any such law as aforesaid on the appointment thereunder of new trustees.

Temporary provision for maintenance.

cf. *Ibid.* s. 161.

93. In any case where, pending the appointment of a committee, it appears to the Master desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the protected person or any member of his family out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Master may, by certificate, authorise such banker or other person to pay to the person to be named in such certificate such sum as he certifies to be proper; and may, by such certificate, give any directions as to the proper application thereof for the protected person's benefit by that person, who shall be accountable for the same, as the Master directs.

Transfer of stock belonging to certain persons. cf. Act No. 45, 1898, s. 162.

94. Where any stock is standing in the name of or is vested in a protected person beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a protected person in trust for the protected person or as part of his property, and the committee dies intestate or himself becomes a mentally ill person or is out of the jurisdiction, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new committee or as he directs for the space of fourteen days after a request in writing for that purpose made by a new committee, then the Court may order some fit person to transfer the stock to or into the name of a new committee or otherwise, and also to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court directs.

Stock in name of mentally ill persons residing out of State may be ordered to be transferred. cf. *Ibid.* s. 163.

95. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction that a declaration to the effect that such person is a mentally ill person, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock to or into the name of the curator or other person appointed as aforesaid or otherwise, and also to receive and pay over the dividends thereof as the Court thinks fit.

Who shall be appointed to make transfer. cf. *Ibid.* s. 164.

96. Where an order is made under this Act for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the company, society or association in whose books the transfer is to be made.

Costs and remuneration may be paid out of estate. cf. *Ibid.* s. 165.

97. The Court may order the costs and expenses of and relating to the petitions, applications, orders, directions, conveyances, and transfers to be presented or made in pursuance of this Part of this Act to be paid and raised out of or from the property, or the rents, income, or profits in respect of which the same respectively shall be presented or made in such manner as it may think proper; and the Court may order such sum by way of remuneration to be paid out of the estate to the committee of any protected person as the Court may think fit.

98.

98. Every conveyance, lease, surrender, transfer, charge, or other disposition made or accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons whomsoever; and this Act shall be a full indemnity and discharge to all persons for all acts and things done or permitted to be done in pursuance thereof, or of any order of the Court made or purporting to be made under this Act.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

cf. Act No. 45, 1898, s. 166.

99. Nothing in this Act contained shall subject any part of the property of a protected person to the debts or demands of his creditors, further or otherwise than as the same was immediately before the commencement of this Act subject thereto by due course of law.

Act not to subject property of protected persons to debts.

cf. *Ibid.* s. 167.

PART XII.

Special Provisions Relating to the Property of Mentally Ill Patients Residing Outside New South Wales.

100. (1) In this Part of this Act—

Interpretation and application of Part.

"Reciprocating state" means any part of Her Majesty's dominions outside New South Wales which has been declared under subsection two of this section to be a reciprocating state for the purposes of this Part of this Act.

cf. *Ibid.* s. 167A.

(2) Where the Governor is satisfied that the laws in force in any part of Her Majesty's dominions outside New South Wales are such as to enable powers to be exercised in that part in cases of patients residing in New South Wales substantially similar to the powers conferred by this Part of this Act in cases of mentally ill patients residing in that part, the

the Governor may by proclamation published in the Gazette declare that part to be a reciprocating state for the purposes of this Part of this Act, and thereupon that part shall become a reciprocating state within the meaning of this Part of this Act.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

(4) References in the foregoing provisions of this section to Her Majesty's dominions outside New South Wales shall be construed as including references to any territory which is under Her Majesty's protection and to any territory the subject of a trusteeship agreement approved by the General Assembly of the United Nations which is under the administration of a government of any part of Her Majesty's dominions.

Powers of Master as to property in New South Wales of mentally ill patients in reciprocating state.

cf. Act No. 45, 1898, s. 167B.

101. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property and estates of mentally ill patients in any hospital or other institution situated in that state and authorised for the reception and care of mentally ill persons—

(a) certifies in writing under his hand and seal to the Master that any person is a mentally ill patient residing in that state and is confined in any such hospital or other institution and that he is possessed of or entitled to or appears to be entitled to or interested in real or personal property in New South Wales; and

(b) by instrument in writing under his hand and seal authorises the Master to collect, recover, manage, sell or otherwise dispose of and administer such property or to make inquiry respecting such property,

the Master shall have and may exercise over and in respect of such property the same powers of collection, recovery, management, sale, disposition, administration, and inquiry as he

he would have had and may have exercised over such property if such mentally ill patient had been resident in New South Wales and a patient within the meaning of this Act; and the provisions of this Act apply in respect of such property accordingly.

(2) Where the Master has, pursuant to any such authority as is referred to in paragraph (b) of subsection one of this section and in the exercise of the powers conferred upon him by that subsection, received any moneys or properties, the Master may, after—

(a) payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and

(b) satisfying or providing for the following debts and claims of which he has notice, namely, debts of the mentally ill patient named in such authority owing to persons resident in New South Wales and the claims of persons so resident against that patient,

pay over or deliver the balance of such moneys or properties to the officer of the reciprocating state who signed such authority or his successor in office, without seeing to the application thereof, and without incurring any liability in respect of such payment over or delivery, and shall duly account to that officer or his successor for that balance.

PART XIII.

Court Visitors.

102. The Court may by general rule or special order:— Court may order protected or incapable persons to be visited.

(a) direct the Director or other fit person to visit any protected person or incapable person and to make a report in writing to the Court or a judge of the state

cf. Act No. 45, 1898, s. 168.

state of mind and bodily health and general condition, and also of the care and treatment of the person visited;

(b) 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 assets of the person visited, and as to the orders of the Court made in respect thereof;

(c) order that any fees and expenses connected with the visit be paid out of the estate of the person visited.

PART XIV.

MISCELLANEOUS PROVISIONS.

Offences in relation to certificates by medical practitioners.

103. A medical practitioner who signs any certificate in or to the effect of the form set out in Part I of Schedule Two or in Schedule Three without having personally examined the person to whom it relates, at the time specified in such certificate, for the purpose of ascertaining the condition of such person or who wilfully makes any false statement in any such certificate shall be guilty of an offence against this Act.

Medical certificates, requests, etc., may be amended.

104. (1) Any medical certificate, request, recommendation, direction, order, or other document, by virtue of which any person has been admitted to an admission centre, mental hospital or authorised hospital, and which is incorrect or defective in any particular, may, with the approval of the Director, and within twenty-eight days after the admission of such person, be amended by the person who has signed the same; and such medical certificate, request, recommendation, direction, order, or other document as so amended shall thereupon be deemed to have and always to have had effect from its original date.

(2)

(2) If such medical certificate, request, recommendation, direction, order, or other document is not so amended, the Director may order the discharge of the person so admitted as aforesaid; or direct the superintendent of such admission centre, mental hospital or authorised hospital to obtain a new medical certificate, request, recommendation, direction, order or other document which shall have and be deemed always to have had effect for all purposes as if it had been obtained, made, and signed on the date on which the medical certificate, request, recommendation, direction, order or other document upon which such person was admitted to such admission centre, mental hospital or authorised hospital was obtained, made and signed.

Patients absent without leave may be retaken.

105. Where a patient absents himself from any admission centre, mental hospital or authorised hospital otherwise than in accordance with the provisions of this Act the superintendent or any officer, servant or other person employed in such admission centre, mental hospital or authorised hospital, member of the police force or any other person authorised by the Director or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised may retake such patient and return him to such admission centre, mental hospital or authorised hospital.

Penalty on superintendents, officers, etc., ill-treating patients.

106. Any superintendent, officer, servant or other person employed in an admission centre, mental hospital or authorised hospital who strikes, wounds, ill-treats, or wilfully neglects any patient or voluntary patient shall for every such offence, be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any period not exceeding six months, or to both such penalty and imprisonment:

Provided that nothing in this section contained shall prejudice or affect any civil responsibility of the offender arising out of such offence.

107.

107. The powers, authorities, duties and functions conferred or imposed upon a superintendent of or an official visitor to an admission centre, mental hospital or authorised hospital by or under this Act shall be exercised and performed by him only in respect of that admission centre, mental hospital or authorised hospital and the patients and voluntary patients therein.

Powers of superintendents and official visitors exercisable in respect of places to which they are appointed.

108. (1) (a) This section shall apply to leucotomy and such other operations or medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

Conditions applicable to performance or giving of certain operations or medical treatment upon or to patients.

cf. Act No. 45, 1898, s. 179A.

(2) No patient shall be subjected to any operation or medical or therapeutic treatment to which this section applies—

(a) by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless the Director has consented to the performance of such operation or the application of such treatment; or

(b) by any other medical practitioner or practitioners unless the Director has consented to the performance of such operation or the application of such treatment by such practitioner or practitioners.

(3)

(3) The Director shall not give such consent unless—

(a) he is satisfied upon the report of a superintendent that such operation or treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated, or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient; and

(b) in the case of leucotomy and any other operation or medical or therapeutic treatment in respect of which a Consultative Committee has been constituted as hereinafter provided the appropriate Consultative Committee has recommended the subjection of the patient to such operation or medical or therapeutic treatment.

(4) No patient shall be subjected to any operation or medical or therapeutic treatment referred to in paragraph (b) of subsection three of this section if the person, on whom notice has been served by the Director as hereinafter provided, has within the time prescribed expressed his disapproval of such operation or medical or therapeutic treatment.

Such notice shall state the name of the patient proposed to be subjected to any such operation or medical or therapeutic treatment, the nature of such operation or treatment, and the time within which disapproval may be expressed.

Such notice shall—

(a) where the patient is married and not separated by order of a court or by agreement from his spouse, be served on the spouse;

(b) where the patient is not married or is separated by order of a court or by agreement, be served on the parents or the surviving parent of such patient;

(c) where there is no person on whom notice is required to be served under the foregoing provisions of paragraphs (a) and (b) of this subsection, or the Director is unable to ascertain particulars of the name

name and whereabouts of any person on whom notice is required to be so served, be served on such person as the Director considers to be the person in whose care, guardianship or custody the patient was prior to his admission to the admission centre, mental hospital or authorised hospital.

Where the Director has reason to believe that any disapproval expressed by any person in accordance with the foregoing provisions of this subsection has been unjustifiably or unreasonably expressed he may refer the matter to the Master for inquiry and determination. Any person who appears to the Master to be interested in the matter may be heard in person or by counsel at any such inquiry.

If the Master is of opinion that such disapproval has been expressed unjustifiably or unreasonably he may order that the patient be subjected to any such operation or medical or therapeutic treatment.

There shall be an appeal to the Full Court of the Supreme Court from any such order in such manner as may be prescribed by rules of Court.

(5) (a) There shall be constituted a Consultative Committee for the purposes of making recommendations to the Director relating to the subjection of patients to the operation of leucotomy.

(b) The Minister may in respect of any other operation or medical or therapeutic treatment to which the provisions of this section apply constitute a Consultative Committee for the purpose of making recommendations to the Director relating to the subjection of patients to such operation or medical or therapeutic treatment.

(c) Any Consultative Committee constituted pursuant to the provisions of this subsection shall consist of such medical practitioners and other persons as the Minister appoints.

(6) Where in the opinion of a superintendent the delay incurred in obtaining the consent of the Director to the performance or application of any operation or medical or therapeutic treatment to which this section applies would endanger the life of any patient such superintendent may—

(a) himself perform such operation or apply such treatment; or

(b) by writing under his hand consent to the performance of such operation upon or the application of such treatment to such patient by any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or by any other medical practitioner or practitioners named in such consent.

Where a superintendent performs any operation or applies any treatment or consents to such performance or application in accordance with the provisions of this subsection he shall forthwith report in writing to the Director the circumstances of the case.

(7) Any consent given by the Director or of a superintendent under this section shall, for the protection of any medical practitioner performing any operation or applying any treatment in accordance with such consent and of any person concerned with the performance of such operation or with the application of such treatment, have the same effect as if such consent had been given by the person operated upon or treated while he was not a mentally ill person or in the case of a minor, as if such consent had been given by his parents.

Certain operations or treatments may be performed or applied without consent of patients.

109. (1) (a) This section shall apply to electro convulsive therapy, electro narcosis therapy and insulin shock and such operations and medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b)

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2) A patient may be subjected to any operation or medical or therapeutic treatment to which this section applies by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or any other medical practitioner or practitioners notwithstanding that the patient or any other person legally entitled to consent to the operation or medical or therapeutic treatment of the patient has not consented thereto.

(3) No operation or medical or therapeutic treatment to which this section applies shall be performed on or applied to a patient unless the superintendent has determined that such operation or medical or therapeutic treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient.

Any such determination shall be expressed in writing.

110. (1) (a) Any proclamation under section one hundred and eight or one hundred and nine of this Act or subsection two of this section shall— Ancillary provisions to ss. 108 and 109.

(i) be published in the Gazette;

(ii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;

(iii)

(iii) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) The day so appointed shall not be earlier than the day next following—

(i) the fifteenth sitting day after such proclamation has been laid before both Houses of Parliament if notice of motion for the disallowance of such proclamation is not given in either House of Parliament within fifteen sitting days after such proclamation has been laid before such House; or

(ii) the day upon which a notice of motion for the disallowance of such proclamation duly given in either House of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days.

(c) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation such proclamation shall not take effect.

(2) Any proclamation under section one hundred and eight or one hundred and nine of this Act may be revoked by the Governor by proclamation.

(3) No action claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against Her Majesty, the Director or a superintendent or any member of a medical staff or medical practitioner referred to in sections one hundred and eight and one hundred and nine of this Act for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the enactment of those sections or the giving of any consent by the Director or a superintendent or as a result of any operation or treatment performed or applied in accordance with the provisions of those sections.

(4) In sections one hundred and eight and one hundred and nine of this Act "superintendent" in relation to an authorised hospital the holder of the license for which is not a medical practitioner means any medical practitioner visiting such authorised hospital pursuant to the provisions of section eleven of this Act.

Penalties.

111. (1) Any person guilty of an offence against this Act shall, except where otherwise expressly provided, be liable to a penalty not exceeding one hundred pounds.

(2) Any such penalty may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Regulations.

112. (1) The Governor may make regulations, not inconsistent with this Act, for and with respect to : —

(a) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act;

(b) prescribing the keeping and form of such books, records, registers or other documents or the furnishing of such reports or statistics as may be necessary or convenient for the administration of this Act;

(c) prescribing the duties, responsibilities, obligations and liabilities of superintendents and medical officers;

(d) all matters relating to correspondence by and with patients including the authorisation of the perusal and withholding of such correspondence;

(e) the general administration of admission centres and mental hospitals;

(f) all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

(2) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULES.

SCHEDULE ONE.

No. of Act.	Name of Act.	Extent of Repeal.
1898, No. 45	Lunacy Act of 1898	The whole.
1924, No. 10	Crimes (Amendment) Act, 1924	Section twenty-nine.
1934, No. 39	Lunacy (Amendment) Act, 1934	The whole.
1937, No. 37	Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937.	Section four.
1944, No. 19	Public Service (Amendment) Act, 1944.	Section three.
1944, No. 38	Lunacy (Amendment) Act, 1944	The whole.
1945, No. 33	Lunacy (Amendment) Act, 1945	The whole.
1946, No. 38	Lunacy (Amendment) Act, 1946	The whole.
1947, No. 41	Jury (Amendment) Act, 1947 ...	Subsection three of section eight.
1949, No. 43	Mental Institution Benefits Agreement Act, 1949.	Section three.
1952, No. 31	Lunacy (Amendment) Act, 1952 ...	The whole.
1955, No. 3	Lunacy (Amendment) Act, 1955 ...	The whole.

SCHEDULE TWO.

MENTAL HEALTH ACT, 1958.

MEDICAL CERTIFICATE.

Part I.

I, ..., of
(*name in full*)
..... (Medical Practitioner)
(*address*)
do hereby certify that on the ..... day of .....
19 , at .....
(*state place where examination took place*)
I personally examined .....
(*name of person in full*)
and I am of the opinion that the said person is a mentally ill person and is a suitable case for admission to the Admission Centre at ..... for observation and treatment.
(*name of Institution*)

* In my opinion the said person is:—
(a) suicidal
(b) dangerous to others
(c) unable to care for himself
(d) not under proper care and control.

* Strike out and initial any of the conditions that are not applicable.

The following treatment and medication (*if any*) has been administered in respect of the mental illness of the said ....., viz.

So far as I am aware—
(a) the bodily health and condition of the said .... is ..... and
(b) the said ..... * has / has not suffered any recent injury.

* Strike out words inapplicable.

If the said ..... has suffered recent injury the particulars of such injury are as follows:—

Made and signed this ..... day of ....., 19 .

Signature .....

Part II.

If the assistance of a member of the Police Force is required this Part of the Schedule should be completed.

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the said ..... to the Admission Centre at .....

Made and signed this ..... day of 19

Signature .....

SCHEDULE

SCHEDULE THREE.

MENTAL HEALTH ACT, 1958.

I, the undersigned, being a medical practitioner, hereby certify that I, on the ..... day of ....., 19 , at *..... ..... separately from any other medical practitioner, personally examined .... of †....., whose occupation is ..... and that the said ..... is mentally ill and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:—

(1) Facts indicating mental illness observed by myself.

(2) Other facts (if any) indicating mental illness communicated to me by ‡

Dated at ..... this ..... day of ....., 19 .

Signature .....

Place of abode .....

* Insert name and address of place of examination.

† Insert residence.

‡ State full names and addresses of every communicant.

SCHEDULE FOUR.

MENTAL HEALTH ACT, 1958.

WHEREAS it has been duly certified under section ..... of the Mental Health Act, 1958, that ..... a prisoner in the ..... is mentally ill, I, the Minister for Health, exercising the powers conferred upon me under the said Act, hereby order that the said ..... be removed to the Mental Hospital at ..... to remain there until he is certified to be not mentally ill and dealt with in accordance with the said section.

Given under my hand the ..... day of ....., 19 .

.....

Minister for Health.

Sydney: V. C. N. Blight, Government Printer—1958

686-7

New South Wales

ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. 45, 1958.

An Act to make provision with respect to the care, treatment and control of persons who are mentally ill and the management of their estates; to repeal the Lunacy Act of 1898 and certain other Acts; and for purposes connected therewith. [Assented to, 31st December, 1958.]

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: —

PART I.

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be cited as the "Mental Health Act, 1958".

*(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

* Date of commencement, 2nd March, 1959. See Gazette No. 24 of 20th February, 1959, p. 497.

Division into Parts.

2. This Act is divided into Parts as follows: —

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–8.

PART III.—ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 9–11.

PART IV.—ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 12–15.

PART V.—DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION—*ss.* 16–20.

PART VI.—VOLUNTARY PATIENTS—*ss.* 21–22.

PART VII.—MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES—*ss.* 23–33.

PART VIII.—WELFARE OFFICERS—*s.* 34.

PART IX.—OFFICIAL VISITORS—*ss.* 35–36.

PART X.—PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES—*ss.* 37–50.

PART XI.—MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS—*ss.* 51–99.

Division 1.—*General Powers and Duties of Master*—*ss.* 51–58.

Division 2.—*Powers and Duties of Master in Respect to Estates of Patients*—*ss.* 59–80.

Division 3.—*Management of Estates of Certain Persons not being Patients*—*ss.* 81–99.

PART XII.—SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES—*ss.* 100–101.

PART XIII.—COURT VISITORS—*s.* 102.

PART XIV.—MISCELLANEOUS PROVISIONS—*ss.* 103–112.

SCHEDULES.

3.

3. (1) The several Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) (a) The persons who immediately before the commencement of this Act held office as the Inspector-General of the Insane, Deputy Inspector-General and Deputy Master in Lunacy shall be deemed as from such commencement to have been appointed by the Governor as the Director, Deputy Director and Deputy Master in the Protective Jurisdiction of the Supreme Court, respectively.

(b) All persons who immediately before the commencement of this Act held office as superintendents, deputy superintendents, medical officers or otherwise under the Acts hereby repealed shall continue to hold office as such as from such commencement.

(c) All persons who immediately before the commencement of this Act held office as official visitors under the Acts hereby repealed shall be deemed to have been appointed as such under this Act:

Provided that any such official visitor who has at such commencement attained the age of seventy years shall upon such commencement be deemed to have vacated his office as such.

(d) All reception-houses appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be admission centres.

(e) All hospitals for the insane or for the criminal insane appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be mental hospitals.

(f) Any house for the reception of insane patients in respect of which a license granted under the Acts hereby repealed is in force at the commencement of this Act shall be deemed to be licensed as an authorised hospital until such license would have expired but for the provisions of this Act or is sooner revoked in like manner as a license for an authorised hospital may be revoked.

(g)

(g) All persons who immediately before the commencement of this Act were incapable persons, insane patients or patients, and insane persons within the meaning of the Acts hereby repealed shall respectively be deemed to be incapable persons, patients and protected persons within the meaning of this Act.

(h) The care, protection, administration and management of the estate of any person which immediately before the commencement of this Act was exercised by a committee of the estate of such person, a person appointed to undertake the care and management of such estate or the Master in Lunacy may continue to be exercised by such committee, person so appointed or the Master under and subject to the provisions of this Act.

(i) All rules of Court, regulations and proclamations made or deemed to have been made under the Acts hereby repealed and in force at the commencement of this Act shall, until varied or rescinded under this Act, continue in force and shall be deemed to have been made under this Act.

(j) All proceedings initiated, pending or part heard under the Acts hereby repealed at the commencement of this Act shall be continued as if such proceedings had been taken or initiated under this Act.

Interpretation.

4. In this Act, unless the context or subject matter otherwise indicates or requires : —

"Admission centre" means a place appointed to be an admission centre under this Act.

"Authorised hospital" means a hospital in respect of which a license granted to any person under Part III of this Act is for the time being in force.

"Committee" means committee appointed under this Act.

"Continued treatment patient" means a patient in respect of whom an order has been made under section fourteen of this Act that he be reclassified as

as a continued treatment patient and be detained in an admission centre, mental hospital or authorised hospital.

"Court" means the Supreme Court in its Protective Jurisdiction.

"Director" means Director of State Psychiatric Services appointed under this Act.

"Incapable person" means any person who is proved to the satisfaction of the Court under section thirty-nine of this Act to be through mental infirmity, arising from disease or age, incapable of managing his affairs.

"Judge" means judge of the Court.

"Justice" means justice of the peace.

"Manager" means the person appointed under section thirty-nine of this Act to undertake the care and management of the property of an incapable person.

"Master" means Master in the Protective Jurisdiction of the Supreme Court.

"Mental hospital" means a place appointed to be a mental hospital under this Act.

"Mentally ill person" means a person who owing to mental illness requires care, treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs and "mentally ill" has a corresponding meaning.

"Patient" means any person admitted to and detained in any admission centre, mental hospital, or authorised hospital in accordance with the provisions of this Act and includes any person so admitted and detained while absent from such admission centre, mental hospital or authorised hospital either with or without leave of absence, but does not include a voluntary patient or, in Part V of this Act, except as provided in subsection three of section nineteen of this Act, a person detained in a mental hospital pursuant to Part VII of this Act.

"Prescribed"

"Prescribed" means prescribed by this Act or the regulations.

"Prison" means prison within the meaning of the Prisons Act, 1952.

"Protected person" means a person in respect of whom a declaration under section thirty-eight of this Act is in force.

"Regulations" means regulations made under this Act.

"Schedule" means Schedule to this Act.

"Stock" means any share or other interest in any company, society or association, and any fund, annuity or security transferable in books kept by any company, society or association, or transferable by deed alone, or by deed accompanied by other formalities, and any money payable for the discharge or redemption thereof, and any share or interest therein.

"Superintendent" means superintendent of any admission centre, mental hospital or authorised hospital.

"Tribunal" means a Mental Health Tribunal constituted under section thirteen of this Act.

"Voluntary patient" means any person who has been admitted to an admission centre, mental hospital or authorised hospital under section twenty-one of this Act.

"Welfare officer" means a person appointed as a welfare officer under section thirty-four of this Act.

References to certain words and expressions —how to be construed.

5. As from the commencement of this Act, in the construction, and for the purposes, of any Act, by-law, regulation, ordinance or any other instrument of the same or a different kind or nature, any reference to, or to be read, deemed and taken to refer to—

(a) any word or expression, within the meaning of the Acts hereby repealed, specified in the first column of the Schedule hereunder or to any like word or expression

expression shall be read, deemed and taken to refer to the word or expression appropriate thereto specified in the second column of such Schedule unless the context or subject matter otherwise indicates or requires.

THE SCHEDULE.

First Column.	Second Column.
Insane, lunatic, insane patient, patient, incapable person, insane person, committee of the estate of an insane person, manager of the estate of an incapable person, Master in Lunacy, Lunacy Act of 1898, Inspector-General of the Insane, Deputy Inspector-General, Chief Clerk in Lunacy, Supreme Court in its Lunacy Jurisdiction, hospital for the insane, hospital for the criminal insane, reception house, licensed house.	Mentally ill, mentally ill person, patient, incapable person, protected person, committee of the estate of a protected person, manager of the estate of an incapable person, Master in the Protective Jurisdiction of the Supreme Court, Mental Health Act, 1958, Director, Deputy Director, Chief Clerk in the Protective Jurisdiction of the Supreme Court, Supreme Court in its Protective Jurisdiction, mental hospital, admission centre, authorised hospital.

(b) any of the provisions of the Acts hereby repealed shall be read, deemed and taken to refer to the corresponding provisions (if any) of this Act.

6. There shall be a Protective Jurisdiction of the Supreme Court. Protective Jurisdiction of Supreme Court.

The jurisdiction which immediately before the commencement of this Act was exercisable by the Supreme Court in its Lunacy Jurisdiction shall be exercised by the Supreme Court in its Protective Jurisdiction.

PART

PART II.

ADMINISTRATION.

Director of State Psychiatric Services.

7. (1) The Governor may appoint a Director of State Psychiatric Services and a Deputy Director of State Psychiatric Services, who shall have and may exercise and perform all the powers, authorities, duties and functions of the Director during his absence for any cause whatsoever.

(2) The Director shall from time to time visit and inspect every admission centre, mental hospital and authorised hospital with or without previous notice and at any time of the day or night as he thinks fit.

The Director may at any time make such inspections, investigations, and inquiries as he deems necessary, and shall make such inspections, investigations and inquiries as are directed by the Minister, with respect to the care, treatment or control of patients and voluntary patients or with respect to the management of any admission centre, mental hospital or authorised hospital.

(3) (a) The Director visiting any admission centre, mental hospital or authorised hospital may, by notice in writing, require any person to furnish him with such information as he requires concerning any of the matters with respect to which the Director is by this Act authorised to make inspections, investigations or inquiries or to attend and give evidence before him concerning any such matters, and to produce all books, documents or other papers whatever in such person's custody or under his control relating thereto.

(b) The Director may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he may administer an oath.

(c) Any person who without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Director or to answer truly and fully any questions put to him, or to produce any book, document or papers required of him by the Director, shall be guilty of an offence against this Act.

(4) (a) Any Director or Deputy Director who has any pecuniary interest, directly or indirectly, in any authorised hospital shall be deemed guilty of misconduct within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

(b) A Director or Deputy Director shall not sign any certificate or recommendation for the admission of any patient into or for the further observation and treatment of any patient in any admission centre, mental hospital or authorised hospital.

(5) The Director shall furnish to the Minister an annual report in writing as to the state and condition of the several admission centres, mental hospitals and authorised hospitals and as to the care of the patients and voluntary patients therein, and as to such other particulars as he thinks fit, and a true copy of such report shall forthwith be laid before Parliament if then in session, or if not then in session, within twenty-one sitting days after the commencement of the next session of Parliament.

Medical superintendents.

8. The Governor may appoint a medical superintendent for each admission centre and mental hospital and if he thinks fit a deputy medical superintendent therefor. No person shall be so appointed unless he is a medical practitioner.

A deputy medical superintendent shall have and may exercise and perform all the powers, authorities, duties and functions of the superintendent during his absence for any cause whatsoever.

PART III.

Admission Centres, Mental Hospitals and Authorised Hospitals.

Admission centres.

9. The Governor may, by notification in the Gazette, appoint any place to be a place for the admission and temporary treatment of mentally ill persons and every such place shall be an admission centre for mentally ill persons. Any such appointment may be revoked in like manner.

10.

Mental hospitals.

10. The Governor may, by notification in the Gazette, appoint any place to be a mental hospital and in and by such notification may assign a name to such hospital. Any such appointment may be revoked in like manner.

Authorised hospitals.

11. (1) The Minister on the recommendation of the Director may, subject to the provisions hereinafter contained, by writing under his hand in or to the effect of the prescribed form grant to any person or to two or more persons jointly, a license to keep a hospital for the admission and treatment of a number of patients and voluntary patients not exceeding the number specified in such license.

Any such license shall be in force for a period of twelve months but may be renewed from time to time for a further period of twelve months.

(2) Applications for a license under this section shall be made to the Minister, shall be in or to the effect of the prescribed form and shall be accompanied by a plan of the premises in respect of which the license is desired.

(3) The Minister may, for good cause, revoke any such license. One month's notice in writing of the proposed revocation shall be given by the Minister to the holder of such license.

(4) If after the expiration of two months from the termination of a license, whether by effluxion of time or revocation thereof, there is in any authorised hospital in respect of which such license has so terminated any patient or voluntary patient, every person keeping such hospital shall be guilty of an offence against this Act.

(5) No person (unless he is a person who derives no profit therefrom, or a committee, or manager, or otherwise authorised under this Act) shall receive to board or lodge in any house, or take the care or charge of, any patient or voluntary patient.

(6)

(6) The holder of a license under this section shall where the authorised hospital in respect of which he holds such license—

(a) has more than one hundred patients and voluntary patients have at all times a medical practitioner resident therein;

(b) has more than fifty but not more than one hundred patients and voluntary patients cause a medical practitioner to attend such authorised hospital daily;

(c) has fifty or less patients and voluntary patients cause a medical practitioner to attend such authorised hospital at least twice a week, or where such number of patients and voluntary patients is less than ten and the Minister authorises the holder of the license to cause a medical practitioner to attend such authorised hospital at specified intervals less frequently than twice a week cause a medical practitioner to attend accordingly.

The medical practitioner resident in an authorised hospital pursuant to paragraph (a) of this subsection shall be the superintendent of such hospital. Where there is no medical practitioner resident in any authorised hospital the holder of the license for such hospital shall be the superintendent of such hospital.

(7) The superintendent of any authorised hospital shall cause to be kept such records and furnish to the Director such particulars as are prescribed in connection with the admission, treatment, discharge, removal, absence with or without leave or death of every patient and voluntary patient admitted to such authorised hospital.

(8) The holder of a license shall not make or cause to be made any additions or alterations to the authorised hospital for which he holds such license without the approval in writing of the Minister.

PART

PART IV.

ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Procedure for admitting persons to admission centres.

12. (1) A person may be admitted to and detained in an admission centre—

(a) upon the certificate of a medical practitioner who is of the opinion that such person is a mentally ill person;

(b) upon a written request to be so admitted and detained made by him to the superintendent of such admission centre;

(c) upon a written request for him to be so admitted and detained made to the superintendent of such admission centre by a relative or friend of such person;

(d) where he is taken to such admission centre by a member of the police force and a copy of an order, relating to such person, made by a justice under subsection two or three of this section is handed to the superintendent of such admission centre by such member of the police force;

(e) where he is taken to such admission centre by a member of the police force who in writing informs the superintendent of such admission centre that such member believes such person to be a mentally ill person and that such member found such person wandering at large or committing some offence against the law or in circumstances which reasonably led him to believe that such person was about to commit some offence against the law :

Provided that a person admitted to or detained in an admission centre pursuant to paragraph (b), (c), (d) or (e) of this subsection shall be examined by the superintendent or a medical officer attached to such admission centre as soon as practicable after his admission thereto and shall not be detained therein after such examination unless such superintendent or medical officer certifies that in his opinion such person is a mentally ill person.

(2)

(2) Where a person informs a justice on oath that—

(a) he believes any other person to be a mentally ill person, and

(b) such other person is without sufficient means of support, or is wandering at large, or has been discovered committing some offence against the law or in circumstances which may reasonably lead a person to suspect that such other person was about to commit some offence against the law,

such justice may by order under his hand require a member of the police force to apprehend such other person and to take him to the nearest convenient admission centre.

(3) A member of the police force or welfare officer shall, and any other person may, if he believes that a person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the care and charge of him, so inform a justice on oath. Such justice shall either himself visit and examine the person in respect of whom he has been informed as aforesaid and make inquiry into the case, or by order under his hand direct and authorise some medical practitioner to visit and examine such person and report in writing to such justice his opinion as to the matters of which such justice has been informed as aforesaid. If upon such visit, examination and inquiry by such justice, or upon the report of such medical practitioner it appears to such justice that such person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the control of him, such justice may by order under his hand require any member of the police force to take such person to the nearest convenient admission centre.

(4) The superintendent of an admission centre shall as soon as practicable after the admission of a person to such admission centre cause such person to be examined by two medical practitioners separately and apart from each other.

If either of such two medical practitioners does not recommend that further observation and treatment of such person in a mental hospital is necessary the superintendent shall cause such person to be examined by another medical practitioner.

Where the superintendent is not a person who gave a certificate pursuant to the proviso to subsection one of this section in respect of such person, such superintendent may be one of the medical practitioners aforesaid.

A medical practitioner upon whose certificate or request a person has been admitted to an admission centre shall not make any examination of such person for the purposes of this subsection.

(5) If after examination as aforesaid two medical practitioners recommend that further observation and treatment of such person in a mental hospital or authorised hospital is not necessary, such person shall be discharged from such admission centre.

(6) If after examination as aforesaid two medical practitioners recommend that further observation and treatment in a mental hospital or authorised hospital is necessary, such superintendent shall cause such person to be brought as soon as conveniently may be before a stipendiary magistrate.

Such recommendation shall be in or to the effect of the prescribed form.

(7) Where a medical practitioner making any examination of any person as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon making any recommendation that further observation and treatment of such person is necessary as aforesaid disclose that fact and give particulars thereof in such recommendation.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(8) The superintendent shall give due notice to the nearest known relative or a friend of such person of his intention to have such person brought before a stipendiary magistrate.

(9) The stipendiary magistrate shall upon such person being brought before him hold an inquiry and if he is satisfied after consideration of the recommendations by the medical practitioners as aforesaid and such other evidence as may be placed before him, that such person is a mentally ill person, he shall—

(a) direct that such person be detained in an admission centre, or be admitted to and detained in a mental hospital or authorised hospital, to be specified in such direction for further observation and treatment as a temporary patient for such period not exceeding six months as may be specified therein; or

(b) order the discharge of such person to the care of any relative or friend who satisfies such stipendiary magistrate that such person will be properly taken care of.

Where pursuant to an inquiry as aforesaid such stipendiary magistrate is not satisfied that such person is a mentally ill person he shall order that such person be discharged from such admission centre.

Such stipendiary magistrate may suspend the execution of any such direction or order for any period not exceeding fourteen days, and may give such directions for the proper care and control of such person in the meantime as such stipendiary magistrate thinks fit.

Where any medical practitioner certifies in writing after examining such person that such person is not fit to be moved from the admission centre in which he is then detained, such person shall not be moved from such admission centre until the same or some other medical practitioner certifies in writing that such person is fit to be moved as aforesaid.

(10) Any certificate given by a medical practitioner for the purposes of paragraph (a) of subsection one of this section shall be in or to the effect of the form set out in Part I of Schedule Two.

Where a medical practitioner giving any certificate as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon giving that certificate disclose that fact and give particulars thereof in such certificate.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(11) Where a medical practitioner is of the opinion that the assistance of a member of the police force is desirable in conveying a person, in respect of whom such medical practitioner has signed any such certificate, to an admission centre he may endorse such certificate in or to the effect of Part II of the form set out in Schedule Two.

Any member of the police force to whose notice any such endorsement is brought shall as soon as practicable convey or assist in conveying such person to an admission centre or cause or make arrangements for some other member of the police force to convey or assist in conveying such person to an admission centre.

(12) Any direction or order given by a stipendiary magistrate, and any order given by a justice, pursuant to any of the provisions of this section, shall be in or to the effect of the appropriate prescribed form and shall have effect according to its tenor.

Mental Health Tribunals.

13. For the purposes of this Part of this Act there shall be such number of Mental Health Tribunals as the Minister may constitute.

A Tribunal shall consist of :—

(a) a psychiatrist;

(b) a medical practitioner; and

(c) a barrister or solicitor.

14.

Temporary patients to be brought before Tribunal.

14. (1) If at the expiration of six months from the date of his admission to an admission centre, mental hospital or authorised hospital a temporary patient is still detained in an admission centre, mental hospital or authorised hospital, the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment;

(b) whether such patient should be detained in an admission centre, mental hospital or authorised hospital for further observation and treatment as a temporary patient for such period not exceeding three months as the Tribunal shall specify in such determination; or

(c) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(2) Where a Tribunal has made a determination under paragraph (b) of subsection one of this section and the patient in respect of whom such determination has been made is at the expiration of the period specified in such determination still detained in an admission centre, mental hospital or authorised hospital the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment; or

(b) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(3)

(3) Any determination under this section shall be embodied in an order in the prescribed form and any such order shall have effect according to its tenor.

Medical reviews by superintendents.

15. It shall be the duty of the superintendent to medically examine or cause to be medically examined, at such intervals as may be prescribed, all continued treatment patients with a view to determining whether or not their continued detention in an admission centre, mental hospital or authorised hospital is necessary.

PART V.

Discharge, Leave and Transfer of Patients and Appeal Against Detention.

Discharge of patients by superintendent.

16. The superintendent—

(a) may at any time, if in his opinion further observation and treatment of a patient is not required, discharge such patient;

(b) may discharge a patient pursuant to an application in that regard made by such patient or by any relative or friend of such patient, whether or not, in the case of an application made by a relative or friend of such patient, an undertaking in writing has been given to the superintendent by such relative or friend that such patient will be properly taken care of and will be prevented from injuring himself or other persons; and

(c) shall so discharge a patient where an order for the discharge of such patient has been made under this Act by the Tribunal, the Director, a judge, a stipendiary magistrate, or the official visitors.

17.

Appeal against superintendent's refusal to discharge patient.

17. Where the superintendent has refused an application for the discharge of a patient as aforesaid, such patient, or relative or friend of such patient, making such application may, in the case of a temporary patient, if a period of three months has elapsed since the date of admission of such patient to an admission centre, mental hospital or authorised hospital, and in the case of a continued treatment patient, at any time, appeal against such refusal to the Director or any two or more official visitors.

The Director or official visitors to whom such appeal is made shall consider the circumstances of the case and the report on the case obtained from the superintendent (which report the superintendent shall give when required by the Director or any such official visitors) in which his reasons for refusing the application are stated, and may, if he or they think fit, order the discharge of such patient from the admission centre, mental hospital or authorised hospital, in which he is detained.

Judge may order discharge of patient.

18. Where a judge receives information upon oath, or has reason or cause to suspect that any person who is not a mentally ill person is detained in any admission centre, mental hospital or authorised hospital such judge may order the superintendent of such admission centre, mental hospital or authorised hospital to bring such person before him for examination at a time to be specified in such order, and if upon the examination of such person, and of such superintendent, and of any medical or other witnesses, it appears to such judge that such person is not a mentally ill person, such judge may order that such person be immediately discharged from such admission centre, mental hospital or authorised hospital.

Patient may be permitted to be absent in certain circumstances.

19. (1) The superintendent may allow a patient to be absent from an admission centre, mental hospital or authorised hospital for such period as the superintendent may think fit, or for such period and at such place and on such conditions as the superintendent may think fit for the benefit of the patient's health.

(2)

(2) Where any patient is so allowed to be absent and does not—

(a) at the expiration of such period return to the admission centre, mental hospital or authorised hospital from which he has been so allowed to be absent and a certificate of a medical practitioner certifying that the detention of such patient as a patient is no longer necessary is not received by the superintendent before the expiration of such period, or

(b) comply with any condition upon which he is so allowed to be absent,

such patient may at any time after the expiration of such period or non-compliance with any such condition, as the case may be, be apprehended by a member of the police force and returned to such admission centre, mental hospital or authorised hospital.

(3) In this section "patient" includes a person detained in a mental hospital pursuant to section thirty-two of this Act.

Transfer of patients.

20. The Director may by order in writing direct the transfer of a patient from the admission centre, mental hospital or authorised hospital in which he is detained to an admission centre, mental hospital or authorised hospital. Any such order for transfer shall be a sufficient authority for the transfer of such patient and for his being received into and detained in the admission centre, mental hospital or authorised hospital to which he is ordered to be transferred.

PART VI.

VOLUNTARY PATIENTS.

Voluntary patients.

21. (1) A person may be admitted to and detained in an admission centre, mental hospital or authorised hospital as a voluntary patient—

(a) where such person is of or above the age of twenty-one years, upon an application in that behalf made by him; (b)

(b) where such person is under the age of twenty-one years, upon an application in that behalf made by the person in whose care and custody he may be.

Such application shall be in writing and be made to the superintendent of such admission centre, mental hospital or authorised hospital.

(2) A superintendent shall, subject to the provisions of this section, discharge a voluntary patient within seven days after an application in writing for his discharge has been made to such superintendent—

(a) where such voluntary patient is of or above the age of twenty-one years, by such voluntary patient or some person on his behalf;

(b) where such voluntary patient is under the age of twenty-one years, by the person upon whose application he was admitted to and detained in an admission centre, mental hospital or authorised hospital pursuant to subsection one of this section.

(3) No person shall be admitted to an admission centre, mental hospital or authorised hospital under this section unless the superintendent is satisfied that such person is likely to be benefited by his being so admitted for care and treatment as a voluntary patient.

(4) A superintendent may—

(a) grant leave of absence to any voluntary patient;

(b) discharge any voluntary patient;

(c) if the condition of the voluntary patient so requires cause such action to be taken as may be necessary to have such voluntary patient admitted to and detained in an admission centre as a temporary patient.

Master may take charge of estates of voluntary patients in certain circumstances.

22. (1) The Master may take charge of the estate of a voluntary patient—

(a) who is of or above the age of twenty-one years, if he is requested so to do by such voluntary patient;

(b)

(b) who is under the age of twenty-one years, if he is requested so to do by the person on whose application such voluntary patient was, pursuant to subsection one of section twenty-one of this Act, admitted to and detained in an admission centre, mental hospital or authorised hospital.

(2) Where, pursuant to this section, the Master takes charge of the estate of a voluntary patient, he shall have in respect thereof all the powers, authorities, duties and functions which he has under Part XI of this Act in respect of the estate of a patient.

PART VII.

MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES.

Procedure where persons charged with offences are found to be mentally ill by a jury or acquitted on the ground of being mentally ill.

cf. Act No. 45, 1898, s. 65.

23. (1) If any person indicted for any offence is mentally ill and, upon arraignment, is found to be so by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person is found by the jury, before whom he is tried, to be mentally ill, the judge before whom any such person is brought to be arraigned or tried as aforesaid may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody in such place and in such manner as to such judge may seem fit until he is dealt with as provided by section twenty-four of this Act.

(2) In all cases where it is given in evidence upon the trial of any person charged with any treason, felony or misdemeanour that such person was, at the time of the act or omission the subject of the charge was done or omitted to be done, mentally ill, and such person is acquitted, the jury shall be required to find specially whether such person was at such

time

time mentally ill and to declare whether such person was acquitted by them on the ground that he was at such time mentally ill.

In this subsection "mentally ill" means, in relation to any person charged as aforesaid, so insane as not to be responsible, according to law, for the act or omission the subject of the charge.

(3) If the jury find that such person was at the time the act or omission the subject of the charge was done or omitted to be done mentally ill as aforesaid, the judge before whom such trial is had shall order such person to be kept in strict custody, in such place and in such manner as to such judge seems fit until the Governor's pleasure is known, and thereupon the Governor may give such order for the safe custody of such person during the Governor's pleasure in a prison as the Governor deems fit.

(4) Upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, the Governor, by warrant under his hand, may direct that such person be conveyed to and detained in a mental hospital during the Governor's pleasure.

Persons found to be mentally ill before trial to be sent to mental hospital.

cf. Act No. 45, 1898, s. 66.

24. (1) When any person committed to take his trial for any offence is certified by two medical practitioners to be mentally ill, such certificates to be in or to the effect of the form of Schedule Three, or is upon arraignment found by verdict to be mentally ill, the Minister may direct, by order under his hand in or to the effect of the form of Schedule Four, that such person be removed to, and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall order his removal to a prison in order to be tried for such offence or if he is not to be so tried order that he be discharged.

(2) Such detention for any period shall not operate as a bar to his subsequent indictment and trial for such offence.

25.

Procedure in reference to certain persons under detention appearing to be mentally ill.

cf. Act No. 45, 1898, s. 67.

25. If any person while detained in any prison for debt, or in any prison, or other place of confinement, in consequence of any summary conviction or order by any justice or in default of bail, appears to be mentally ill, the Minister may, upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct, by order under his hand, that such person be removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall, if such person remains subject to be continued in custody, order his removal to the prison or other place from where he was taken, or to some other prison or place of confinement, or if such person does not remain subject to be continued in custody order that he be discharged.

Order by Attorney-General for trial of issue whether patient fit to plead if placed upon trial.

cf. *Ibid.* s. 67A.

26. (1) In any case in which a person charged with an offence for which he has not been tried (in this section referred to as "the person charged") is detained in a mental hospital the Attorney-General, if he is of opinion that the question whether the person charged is fit to plead if put upon his trial should be determined by a jury, may by order under his hand direct that the person charged be removed from such mental hospital to some prison appointed by the Attorney-General and specified in the order.

(2) Such order shall be a sufficient warrant for the removal of the person charged from the hospital in which he is detained and for his detention in the prison appointed by the Attorney-General and specified in the order.

(3) The Attorney-General may further order that a jury of twelve persons be empanelled for trial of an issue whether the person charged is fit to plead if placed upon his trial.

(4) The said issue shall be tried at a time and place appointed by the Attorney-General before a judge of the Supreme Court or a chairman of Quarter Sessions.

(5)

(5) The governor of the prison in which the person charged is detained shall procure the attendance of the person charged at the time and place appointed for the trial of the said issue.

(6) At the request of the Clerk of the Peace the Sheriff shall summon thirty-six persons, chosen by him from the list of jurors in the jurors' list for the jurors' district within which the place appointed for the trial of the said issue is situated, to attend at the time and place appointed for the trial of the said issue.

(7) A jury of twelve persons shall be empanelled from the jurors in attendance at the court and the said issue shall be tried in accordance with the procedure adopted at a criminal trial where upon the trial of an indictment a question is raised whether the accused is fit to plead. The judge presiding at the trial shall have power to make any order including a power of postponement and give any directions which in his opinion are necessary for the trial of the issue. The jurors empanelled to try the issue shall be sworn in such manner as the court shall direct.

(8) If the jury find that the person charged is not fit to plead he shall be returned to the hospital from which he was removed.

(9) If the jury find that the person charged is fit to plead he shall be returned to prison.

(10) If a bill is found against him he shall be placed upon his trial.

(11) If a bill is not found against him a certificate shall be issued by the Attorney-General to the judges of the Supreme Court in accordance with the provisions of section three hundred and fifty-eight of the Crimes Act, 1900, as amended by subsequent Acts, and any of the said judges may thereupon direct the gaoler in whose custody the person charged may be to discharge him from custody.

(12) At the trial of the said issue the person charged shall be entitled to give evidence on oath or to make an unsworn statement.

(13) If the jury find that the person charged is fit to plead and he is placed upon his trial he shall be entitled to set up the defence that he was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill.

In this subsection "mentally ill" has the meaning ascribed thereto in subsection two of section twenty-three of this Act.

Procedure on certain prisoners appearing to be mentally ill.

cf. Act No. 45, 1898, s. 68.

27. If any person while imprisoned in any prison, under any sentence of hard labour or imprisonment imposed otherwise than on the conviction or order of justices appears to be mentally ill the Minister may upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct by order under his hand in or to the effect of the form of Schedule Four, that such person be removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall if such person remains subject to be continued in custody, order his removal to the prison from where he was taken, or to some other prison, or if such person does not remain subject to be continued in custody order that he be discharged.

Procedure on prisoners under sentence of death appearing to be mentally ill.

cf. *Ibid.* s. 69.

28. If it is made to appear to the Minister by any means whatsoever that there is good reason to believe that any prisoner in confinement under sentence of death is then mentally ill, the Minister may appoint two or more medical practitioners to inquire into the mental health of such prisoner, and if on such inquiry such prisoner is found to be then mentally ill, the fact shall be certified in writing by such practitioners to the Minister, and on receipt of such certificate the Minister may, by order under his hand, direct that such prisoner be removed to and detained in a mental hospital until such prisoner is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall order that such person be removed to any prison or other place of confinement to undergo his sentence of death or to be dealt with according to law, as if no such order for his removal to and detention in a mental hospital had been made.

29.

Governor may liberate on conditions.

cf. Act No. 45, 1898, s. 72.

29. When any person is ordered to be kept in custody during the Governor's pleasure, any order made by the Governor in relation to the custody of such person may be renewed and varied from time to time or revoked; and the Governor may permit any such person or any person conveyed to and detained in a mental hospital pursuant to a direction by the Governor, not being a person under conviction and sentence, to be liberated from custody or such mental hospital, upon such terms and conditions as the Governor may think fit; and if any such term or condition is broken, such person may be retaken and dealt with as provided in section thirty of this Act.

Escaped mentally ill persons detained under this Part may be recaptured.

cf. *Ibid.* s. 73.

30. In case of the escape of any person detained in a mental hospital pursuant to the provisions of this Part of this Act he may be retaken at any time by the superintendent, or any officer, servant or other person employed therein, or any member of the police force, or any other person authorised by the Minister or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised and shall be conveyed and admitted to and detained in such hospital.

Penalties for assisting or permitting escape.

cf. *Ibid.* s. 74.

31. Any person who rescues any person being conveyed to or detained in any mental hospital pursuant to the provisions of this Part of this Act, and the superintendent or any officer, servant, or other person employed in any such hospital who, through wilful neglect or connivance, permits any person so detained therein pursuant to the provisions of this Part of this Act to escape therefrom, or conceals or abets or connives at any such escape, shall be guilty of an offence against this Act and shall be liable upon conviction on indictment to imprisonment for a period not exceeding three years or upon summary conviction to imprisonment for a period not exceeding one year or to a penalty not exceeding five hundred pounds or both such imprisonment and penalty.

32.

Persons attempting to commit suicide and mentally ill not triable for the offence.

cf. Act No. 45, 1898, s. 75.

32. Any person committed to take his trial for having attempted to commit suicide who is certified by two medical practitioners in or to the effect of the form of Schedule Three to be mentally ill shall forthwith be sent to and detained in a mental hospital and such person, when certified by the superintendent and Director, or by the superintendent and an official visitor, to be not mentally ill, shall be discharged from such hospital, and shall not be put upon his trial or be liable to any charge or indictment for having attempted such act of suicide.

Security conditions for persons detained in mental hospitals under this Part.

33. (1) Any person detained in a mental hospital pursuant to the provisions of this Part of this Act shall be subject to such security conditions as the Director may deem necessary.

(2) The Director may by order in writing direct the transfer of a person detained in a mental hospital pursuant to this Part of this Act to any other mental hospital. Any such order for transfer shall be a sufficient authority for the transfer of such person and for his being admitted to and detained in the mental hospital to which he is ordered to be transferred.

PART VIII.

Welfare Officers.

Appointment and duties of welfare officers.

34. (1) For the purposes of this Act the Governor may appoint such welfare officers as he deems necessary.

(2) The powers, authorities, duties and functions of a welfare officer shall be: —

(a) on the direction of a superintendent to escort and convey or assist in escorting and conveying a patient to a mental hospital, where such patient has been granted leave of absence from such mental hospital and such patient's return is desirable on account of a breakdown in his mental health;

(b)

(b) to escort and convey or assist in escorting and conveying patients from a mental hospital to another mental hospital or to a public hospital;

(c) to visit patients, who are on leave of absence from mental hospitals, or their relatives or friends for the purpose of advising them on matters pertaining to the welfare of such patients;

(d) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon him by or under this Act or as may be assigned to him by the Director.

PART IX.

Official Visitors.

Appointment of official visitors.

35. (1) The Governor may appoint for every admission centre, mental hospital or authorised hospital, two or more official visitors, one of whom shall be a medical practitioner and one a stipendiary magistrate, barrister-at-law, or solicitor.

(2) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of an official visitor and such official visitor shall not in his capacity as such be subject to the provisions of any such Act.

(3) No person of or above the age of seventy years shall be appointed as an official visitor. An official visitor shall cease to hold office as such on the day upon which he attains the age of seventy years.

(4) Any two or more official visitors, one being a medical practitioner, shall visit the place for which they are appointed official visitors once at least every month with or without any previous notice, and at such hours of the day or night, and for such length of time as they think fit, and also at such other times as the Minister may direct.

(5)

(5) Any person who has any pecuniary interest, directly or indirectly, in an authorised hospital shall not be or act as an official visitor for any authorised hospital and no official visitor shall sign any certificate or request for the admission of any person to, or attend professionally upon, any patient in any admission centre, mental hospital or authorised hospital.

(6) Such official visitors, when visiting such admission centre, mental hospital or authorised hospital, shall, so far as practicable, inspect every part of the same and make such inquiries as they may deem necessary as to the care, treatment and control of the persons detained therein.

Duties of superintendents on visits by official visitors.

36. (1) The superintendent shall allow the official visitors visiting an admission centre, mental hospital or authorised hospital to have access to and inspect every part thereof and shall permit them to see and interview every person detained therein, and shall give full and true answers to the best of his knowledge to all questions which the official visitors may ask in reference to the said admission centre, mental hospital or authorised hospital, and the persons detained therein, and shall produce to the official visitors such registers, books, records, orders, certificates, papers and other documents relating to the admission and discharge, care, treatment and control of persons detained therein, and furnish all such returns relating to any of the matters aforesaid, as may be required by such official visitors.

(2) The official visitors shall—

(a) examine and sign all registers, books and records produced to them in accordance with the foregoing provisions;

(b) on every visit to an admission centre, mental hospital or authorised hospital enter in the official visitors' book the fact of their visit with such observations as they think fit; and

(c) transmit to the Minister as soon as practicable after each such visit a report upon their visit containing such information as they deem necessary.

PART X.

PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES.

Constitution of Court. Act No. 45, 1898, s. 101.

37. The Court shall, except on appeal as hereinafter provided, be holden by the Chief Judge or a judge in Equity, or by any other judge sitting for the Chief Judge in Equity during his absence from Sydney or illness or at his request:

Provided that any such judge may sit in chambers to determine all such matters as in his opinion may advantageously and with propriety be heard in chambers; and such judge when so sitting shall have the same powers and jurisdiction as in open court.

Declarations of Court as to persons being mentally ill. cf. *Ibid.* s. 102.

38. Where it is proved to the satisfaction of the Court that a person is mentally ill and incapable of managing his affairs, the Court may make a declaration to that effect, and may direct a reference to the Master to make inquiries concerning the property of such person, and may make all proper orders for rendering the property of such person, or the income thereof available for the payment of his debts and for the maintenance or benefit of himself and his family, and for carrying on his trade or business (if any), and may, if necessary, appoint, either with or without security, a committee of his estate, and also when desirable appoint a committee of his person.

Persons incapable of managing their affairs. cf. *Ibid.* s. 103.

39. (1) Where it is proved to the satisfaction of the Court that any person is, through mental infirmity, arising from disease or age, incapable of managing his affairs, the Court may make all proper orders for rendering the property and income of the said person available for the payment of his debts and for the maintenance and benefit of himself and his family; and may make orders for the care and management of his property in all respects as if he were a protected person; and may, if necessary, appoint a manager, either with or without security, to undertake the care and management of his property under the order and direction of the Court.

(2)

(2) The manager shall, subject to the said orders and directions and to the rules of Court, have the same powers and be subject to the same obligations and control as a committee, appointed under section thirty-eight of this Act, of the estate of a protected person, and the powers and provisions contained in this Act relating to the management and administration of the estates of protected persons shall apply to the estates of incapable persons.

Superseding orders, etc. when person has recovered.
cf. Act No. 45, 1898, s. 104.

40. Where it is proved to the satisfaction of the Court that any protected person or incapable person has recovered his mental health and is capable of managing his affairs, the Court may make a declaration to that effect, and may make all proper orders to give effect to such declaration, and to release the property of such person from the control of the Court or the manager, as the case may be, and to discharge the committee of his estate and the committee (if any) of his person or the manager, as the case may be.

Mode of application.
cf. *Ibid.* s. 105.

41. Applications under sections thirty-eight, thirty-nine and forty of this Act shall be made, and evidence by affidavit given in support thereof, in such manner as is prescribed by rules of Court :

Provided that every deponent may be cross-examined upon his affidavit either at the hearing or at such time and place as the Court may direct, and at such hearing the Court may receive or require the oral evidence of witnesses and such other proofs as may be deemed necessary.

Service of process.
cf. *Ibid.* s. 106.

42. Notice of any applications under sections thirty-eight, thirty-nine and forty of this Act and of the evidence by affidavit to be given in support thereof shall be given to such persons, in such manner and within such time as may be prescribed by rules of Court.

Court may order inquiry before a jury.
cf. *Ibid.* s. 107.

43. The Court in any case, instead of determining whether or not the person whose mental health is the subject of inquiry is mentally ill and incapable of managing his affairs, or is through mental infirmity, arising from disease or age, incapable of managing his affairs, may order that question to be

be determined by a jury; and thereupon the like proceedings for procuring the return of such jury shall be had and taken as provided by any law for the time being in force for the return of juries in the Supreme Court, and in every proceeding before a jury pursuant to this section the number of the jury shall be four, unless the Court order a jury of twelve.

Inquiries before jury. cf. Act No. 45, 1898, s. 108.

44. Where any such inquiry before a jury is ordered, the Court shall direct the question to be tried before a judge or the Master, or a commissioner specially appointed, who shall while so acting have for the purpose of the inquiry all the powers of the Supreme Court; and the trial of every such question and the verdict thereon shall be had and dealt with in all respects in accordance with any law for the time being in force relating to the trial of issues out of the Supreme Court.

After verdict Court may make declarations and orders. cf. *Ibid.* s. 109.

45. When the verdict of the jury has been returned, unless a new trial is granted, the Court may make such declaration and orders as mentioned in sections thirty-eight and thirty-nine of this Act, as the case may require.

Examination of person whose mental health is in question. cf. *Ibid.* s. 110.

46. On the hearing of any application under section thirty-eight or thirty-nine of this Act the person whose mental health is in question shall be examined by the Court; and on the trial of any such question as abovementioned there shall be a like examination by the jury before they consult as to their verdict, and every such examination shall take place in open court or in private, as may be deemed expedient:

Provided that, if it appears to the Court to be unnecessary or inexpedient that such person should be examined by the Court, or the jury, the Court may, in lieu of the examination aforesaid, direct the Master to personally examine the said person and report on such examination, or may dispense with any examination whatever.

Construction of references to commission of Lunacy and certain like expressions. cf. *Ibid.* s. 111

47. Where in any Act or rule of Court or instrument, reference is made to a commission of Lunacy, or a writ in the nature of a writ de lunatico inquirendo, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission,

commission, the application and declaration or orders thereon in sections thirty-eight and forty of this Act mentioned, as the case may require, shall be taken to be intended by or comprehended in such reference.

Persons found mentally ill in places outside N.S.W.
cf. Act No. 45, 1898, s. 112.

48. When the Court is satisfied that any person has been found mentally ill and incapable of managing either himself or his affairs or both by any commission de lunatico inquirendo, or other legal inquiry in any part of the British Commonwealth of Nations outside New South Wales or in any other country to which the Governor by proclamation published in the Gazette extends the provisions of this section, the Court may direct a copy of the inquisition or finding on such commission or inquiry, duly certified by the proper officer of the Court or other authority into which such inquisition or finding has been returned, to be filed of record in the Court; and may thereupon appoint a committee of such person's estate or person, or both, and may give such other orders in respect of the management of his estate or person as it deems fit; and such committee shall have the same duties, powers, and liabilities as if he were the committee of the estate or person of a protected person.

Court may order costs.
cf. *Ibid.* s. 113.

49. The Court may make such order as to the costs, charges, and expenses of and incidental to any proceeding authorised by this Act as the Court thinks proper, and every such order shall have the same effect as orders for the payment of money made by the Supreme Court in its equitable jurisdiction.

Appeal.
cf. *Ibid.* s. 114.

50. There shall be an appeal to the Full Court of the Supreme Court from every order or decision made under this Act before or by a single judge in such manner as may be prescribed by rules of Court.

PART

PART XI.

MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS.

Division 1.—*General Powers and Duties of Master.*

Master in Protective Jurisdiction of Supreme Court.

cf. Act No. 45, 1898, s. 115.

51. There shall be a Master in the Protective Jurisdiction of the Supreme Court, who shall be the person for the time being holding the office of Master in Equity.

The Governor may appoint a Deputy Master. The Deputy Master may exercise all the powers conferred and shall perform all the duties imposed upon the Master by any Act or by any rule or order of the Court. During the illness or absence of the Deputy Master, the Court or the Chief Judge or a judge in Equity may authorise the Chief Clerk in the Protective Jurisdiction of the Supreme Court to exercise all the powers conferred and perform all the duties imposed upon the Master.

Administration of estates of certain persons.

cf. *Ibid.* s. 116.

52. (1) Subject to rules of Court, the jurisdiction and powers of the Court in respect of the administration and management of the estates of all protected persons and incapable persons may be exercised by the Master; and every order made by the Master under the authority hereby conferred on him shall take effect, unless rescinded or varied by the Court; and the Master shall have and execute all the powers and duties hereby or under the authority hereof vested in and imposed upon him; and subject to and in accordance with the regulations and the rules of Court and to any special order of the Court, the Master shall undertake the general care, protection, and management, or supervision of the management, of the estates of all patients, protected persons and incapable persons; and he shall supervise and enforce the performance of the obligations and duties of all committees under this Act, and shall take care of, collect and administer, under the provisions of this Act, the property and estates of all patients.

(2)

(2) The Master may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stockbroker or any other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate of any patient, protected person or incapable person.

(3) The Master shall not be responsible for the default of any such agent if employed in good faith.

Expenses incurred to be paid out of estate.
cf. Act No. 45, 1898, ss. 117, 118.

53. All expenses incurred by or on behalf of the Crown, in the care, protection, and management, or in the supervision of the management, under this Act, of the estate of any patient, protected person or incapable person, may be charged by the Master against and shall be paid out of and recoverable from such estate or may be paid by the Master out of any money of such patient, protected person or incapable person that comes to his hands, or may be recovered by him on summary application to the Court, whether or not such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Percentages.
cf. *Ibid.* s. 119.

54. There shall be paid to the Master a percentage at such rate not exceeding five pounds per centum per annum as may be fixed by rule of Court on the clear annual income of every patient, protected person and incapable person; and the said percentage shall be charged upon and payable out of the estate of such patient, protected person or incapable person whether or not, before payment, such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Master to have all necessary powers of inquiry, taking evidence, etc.
cf. *Ibid.* s. 120.

55. (1) The Master may in the execution or performance of his powers, authorities, duties and functions, and also in the prosecution of all inquiries and matters which may be referred to him under this Act, summon persons before him

and

and administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit, and take recognizances and require the production of books, papers, accounts, and documents; and every person so summoned shall be bound to attend as required by the summons and give evidence before the Master in like manner as persons summoned before him in his equity jurisdiction are bound to attend and to give evidence; and the Court may by any order (general or particular) refer to the Master any inquiries under the provisions of this Act relating to the person and estate of any person.

(2) Every person who does not appear pursuant to such summons (having had his reasonable expenses paid or tendered to him at the time of service of such summons), or does not assign some reasonable excuse for not so appearing, or appears and refuses to be sworn or examined shall, for every such neglect or refusal, be liable to a penalty not exceeding ten pounds.

Witnesses may be cross-examined orally.

cf. Act No. 45, 1898, s. 121.

56. Every person giving evidence by affidavit shall be liable to oral cross-examination by or before the Master upon his affidavit, and after cross-examination may be re-examined orally by or on behalf of the person filing the affidavit; and every person giving evidence by affidavit shall be bound to attend before the Master to be so cross-examined and re-examined upon receiving due and proper notice and payment or tender of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena ad testificandum before the Master; and the expenses attending on such cross-examination and re-examination shall be paid in such manner and by such person as the Master directs.

Master may issue advertisements.

cf. *Ibid.* s. 122.

57. The Master may cause to be issued such advertisements as may to him seem expedient with reference to the subject matter of a proposed inquiry or with a view to the efficient discharge of his duties as Master under this Act with regard to the estate and property of any person.

58.

Master to approve of and to enforce security to be given by committee of estate.

cf. Act No. 45, 1898, s. 123.

58. The Master shall approve on behalf of Her Majesty of the security to be given by the committee of the estate of any person under order of the Court pursuant to this Act, and it shall be the duty of the Master to see that the conditions of all bonds and recognizances heretofore or hereafter to be given or entered into by the committee of the estate or other persons in the matter of the estate shall be faithfully and regularly observed and performed, and immediately to report to a judge any breach or non-performance of any of such conditions; and thereupon such judge may cause such bond or recognizance to be forfeited or estreated, and such forfeiture or estreat shall be enforced and effected in the manner provided by any law now or hereafter to be in force relating to the estreat of recognizances entered into to Her Majesty.

Division 2.—Powers and Duties of Master in Respect to Estates of Patients.

Powers of Master in respect of estates of patients.

cf. *Ibid.* s. 124.

59. The Master shall have in respect of the property and estate of any patient, in addition to the general powers conferred upon him in Division 1 of this Part of this Act, all the like powers and authorities, subject to the like limitations, as are hereinafter, in Division 3 of this Part of this Act, given to the committee of the estate of a person, and also the powers hereinafter mentioned.

Power to apply property of certain acquitted persons for their benefit.

cf. *Ibid.* s. 125.

60. Where any person has on the trial of any information been acquitted as referred to in subsection two of section twenty-three of this Act or has upon arraignment upon a criminal charge been found to be mentally ill, the Sheriff shall report the fact to the Master, who shall thereupon make inquiry respecting the property of such person, and the Court may, on being satisfied that such person is still a mentally ill person and is still in confinement, make any orders with respect to the property of such person 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.

61. The Master shall have the management and care of the property of every 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 patient, that is to say, he may : —

Master's powers as to property of patients.
cf. Act No. 45, 1898, s. 126.

(a) receive moneys, rents, incomes, and profits of real and personal property;

(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 one thousand 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, suits, and other proceedings on behalf of the patient;

(j) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

62.

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

cf. Act No. 45, 1898, s. 127.

62. (1) The Master may apply to the Court in such manner as may be prescribed by rules of Court, for directions with respect to the exercise of any of the powers over the estate of a patient which the Court may exercise, or order a committee to exercise, over the estate of any person, under Division 3 of this Part of this Act.

(2) The Court 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.

Master may execute instruments on behalf of patient.

cf. *Ibid.* s. 128.

63. (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 not mentally ill, and may, in the name and on behalf of the patient, execute and sign deeds, instruments, transfers of shares, receipts, releases, and other documents, which shall be as effectual as if executed and signed by the patient himself while not mentally ill, 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 is a patient or not.

(2) 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 is 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.

Summary proceedings for protection of property of patients.

cf. *Ibid.* s. 129.

64. (1) If any real or personal property of a patient is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient by any person, the Master may as such Master claim and recover possession of such property or damages for the conversion or injury thereof,

thereof, or payment of the said sum by summary proceeding on complaint before a judge who is hereby authorised and required on proof to his satisfaction of the said cause of complaint to make an order requiring the defendant to give up possession of such property, or to pay reasonable damages to be fixed by the said order for the conversion or injury thereof, or to pay the sum so due as aforesaid, and in default of compliance by the defendant with the said order, to order in and by the same or any subsequent order that the defendant be committed to prison for any period not exceeding six months.

(2) Such judge may in any complaint under this section make such order as to costs as he thinks fit, and every order under this section shall have the same effect, and may be enforced in like manner as any judgment, decree, or order of the Supreme Court in its jurisdiction at law or in equity.

Payments to consolidated revenue.
cf. Act No. 45, 1898, s. 130.

65. (1) 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 may from time to time appoint, all money paid to him for the maintenance of any patient, and all percentages.

(2) 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.

(3) A separate current 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.
cf. *Ibid.* s. 131.

66. The Master may apply moneys standing to the credit of the current account of a patient in 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)

(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 not a mentally ill person;

(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 taking up of the rights to issues of new shares to which a patient becomes entitled by virtue of his existing shareholdings;

(g) the investment, in manner hereinafter provided, of money not presently required for the above purposes;

(h) the payment to a patient or any person in accordance with the provisions of section seventy-one or seventy-three of this Act:

Provided that the Master may report to and apply for the advice and directions of the Court upon any of the matters aforesaid; and the Court 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 to be made, and notices given as may be deemed advisable, and may make such orders in the premises as may be thought proper.

Investment on purchase of land.
cf. Act No. 45, 1898, s. 133.

67. The Master may, with the leave of the Court, to be obtained in such manner as is or may from time to time be prescribed by rules of Court, invest any money unapplied as aforesaid in the purchase of land, if such purchase appear to the Court to be desirable for the purpose of protecting the estate of the patient from injury or deterioration in value, of increasing the value or facilitating the sale of other lands of the estate, or of providing a home for the patient or his dependants; and the Court may, on the hearing of the application, deal with the same ex parte, or require notice to be served on any person.

68.

Common fund.
cf. Act No. 19, 1913, s. 36A.

68. (1) Subject to this Act balances to the credit of all current accounts in the trust fund at the commencement of this Act and at any time thereafter shall be one common fund and shall be available for investment as provided in this Act.

(2) Interest received from investments from the common fund shall be credited to an account styled "Interest Account" and shall be allocated therefrom as provided in this section.

The costs and expenses of such allocation shall be a charge on the common fund.

(3) Interest shall be allowed on all balances forming part of the common fund, and shall be credited at such rate or rates and at such time or times as the Master may determine.

Investment of common fund and moneys unapplied under s. 66.
cf. *Ibid.* s. 36D.

69. Moneys unapplied as aforesaid and moneys in the common fund may be invested—

(a) in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts; or

(b) on deposit with the Colonial Treasurer for a period or periods not exceeding twelve months in any one case, which deposit shall bear interest at the prescribed rate and any such deposit may be renewed from time to time for a like period and subject to the like conditions.

Withdrawal from the common fund.
cf. *Ibid.* s. 36E.

70. (1) The Master may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund and standing to the credit of the current account of any patient for any purpose of or relating to the exercise and discharge by the Master of his powers, authorities, duties and functions in the care, protection and management of the estate of such patient.

(2) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund.

71.

Payment over of estate before discharge in certain cases.
cf. Act No. 45, 1898, s. 134.

71. (1) If any patient is permitted to be absent from an admission centre, mental hospital or authorised hospital under the provisions of this Act, the Master may, in his discretion, pay over to the patient, or to any person on his behalf who gives 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 his current account 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.

(2) 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.

Sale, etc. by patient before his discharge may be set aside.
cf. *Ibid.* s. 135.

72. 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 may, on application being made by the Master in such manner as is or may from time to time be prescribed by rules of Court, and on notice being given to such persons as the Court 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 a mentally ill person at the time when he made or executed the transfer, sale, alienation, charge, or lease.

Payments to discharged patients and to personal representatives of deceased patients.
cf. *Ibid.* s. 136.

73. (1) 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 his current account 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, documents and chattels forming part of his estate.

(2) 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. (3)

(3) The Master, in his discretion, may continue to have the care, protection and management of the estate of a discharged patient until the discharged patient obtains an order of the Court or the Master is satisfied that the discharged patient is capable of managing his own affairs.

(4) The Master, in his discretion, may after the death of a 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, documents 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 that probate of the will or letters of administration have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Unclaimed personal effects and moneys of patient.

cf. Act No. 45, 1898, s. 137.

74. (1) All personal effects in the hands of the Master belonging to a patient, and not claimed within two years from the date of the death or 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.

(2) All moneys standing to the credit of a patient in his current account in the trust fund at the end of six years from the date of the death or discharge of that patient shall be carried to and form part of the consolidated revenue.

(3) Nothing herein contained shall affect the right of a person under disability by reason of his being an infant, a mentally ill person or absent 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.

cf. *Ibid.* s. 138.

75. (1) 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.

(2)

(2) On the discharge or death of a patient, he or his legal personal representative (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 not a mentally ill person.

Relatives, etc., may agree for maintenance of patient.
cf. Act No. 45, 1898, s. 139.

76. The Master may agree with any relative, guardian, or friend of any patient detained in an admission centre, mental hospital or authorised hospital for his maintenance while detained therein, and such relative, guardian, or friend shall be entitled to be reimbursed all necessary sums expended in such maintenance and interest thereon out of any real or personal property of such patient.

Owner, etc., of ship or aircraft liable for maintenance of certain mentally ill persons.
cf. *Ibid.* s. 140.

77. (1) If within sixty days after the arrival of any ship or aircraft in New South Wales the Master has reasonable cause to believe that a passenger or member of the crew arriving by that ship or aircraft is a mentally ill person and has become, or is likely to become, a charge upon the public as a patient in an admission centre or mental hospital, it shall be lawful for the Master thereupon to require the owner, charterer, agent, or master of that ship or aircraft to execute, with two sufficient sureties, jointly and severally, a bond to Her Majesty in such sum as the Master may determine, not exceeding three thousand pounds, conditioned to pay to the Master the maintenance of that passenger or member of the crew in such admission centre or mental 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 of the ship or aircraft, subject to the approval of the Master, to return such passenger or member of the crew to the place whence he was transported.

(2) 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.

(3)

(3) No bond shall be required when the passenger or member of the crew is, at the date of the arrival of the ship or aircraft, domiciled in New South Wales; but the onus of proving such domicile as aforesaid shall be upon the said owner, charterer, agent, or master of the ship or aircraft.

Neglect or refusal to execute bond. cf. Act No. 45, 1898, s. 141.

78. If the said owner, charterer, agent, or master of the ship or aircraft 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 three thousand pounds, to be recovered summarily before a stipendiary magistrate.

Cost of maintenance of patient may be recovered.

79. The cost to the Crown of the maintenance of a patient shall constitute a debt due to the Crown and shall be recoverable accordingly from the patient or his estate:

Provided that if the Master considers that undue hardship would be occasioned by the enforcement of such debt or other circumstances so warrant he may in his discretion either forego the debt altogether or accept a smaller sum in satisfaction thereof.

Court may direct Master to report as to mental health of any patient. cf. *Ibid.* s. 148.

80. The Court may direct the Master to personally examine any patient, and take evidence and call for information as to the mental health of such patient, and report thereon to the Court, and the Court may make orders for and with respect to—

(a) the appointment of a guardian or otherwise for the protection, care, and management of the person or of the estate, or of the person and estate, of any patient who by any such report is found to be a mentally ill person; such guardian, according to the nature of his appointment, to have the same powers and authorities, and be subject to the same control and liabilities, as a committee of the person and estate of a protected person appointed under this Act;

(b)

(b) the appointment of a receiver or otherwise for the protection, care and management of the estate of such patient; such receiver to have the same powers and authorities and be subject to the same control and liabilities as a receiver of the estate of a protected person appointed under this Act;

(c) the application of the income of such patient or a sufficient part thereof for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such patient, and of or in connection with the said examination by the Master and the obtaining of such orders by the Court;

(d) the investment or other application for the purpose of accumulation or otherwise of the surplus (if any) of such income as lastmentioned for the use of such patient, his wife, or children as to the Court may seem fit.

Division 3.—*Management of Estates of Certain Persons not being Patients.*

Power to raise money for certain purposes.
cf. Act No. 45, 1898, s. 149.

81. (1) The Court may order that any property of a protected person be sold, charged, mortgaged, dealt with, or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to all or any of the purposes following:—

(a) payment of such protected person's debts or engagements;

(b) discharge of any incumbrance on his property;

(c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit;

(d) payment of or provision for the expenses of his future maintenance;

(e) payment of the costs of any proceeding under this Act, or of any sale or other disposition made under this Act.

(2)

(2) In case of a charge or mortgage being made under this Act for the expenses of future maintenance the Court may direct the same to be payable, either contingently, if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as the Court thinks expedient.

Powers exercisable by committee under order of Court.

cf. Act No. 45, 1898, s. 150.

82. The Court may by order authorise and direct the committee of the estate of a protected person to do all or any of the following things: —

(a) sell any property belonging to such protected person;

(b) make exchange or partition of any property belonging to such protected person, or in which he is interested, and give or receive any money for equality of exchange or partition;

(c) carry on any trade or business of such protected person;

(d) grant leases of any property of such protected person for building, agricultural or other purposes;

(e) surrender any lease and accept a new lease;

(f) accept a surrender of any lease and grant a new lease;

(g) execute any power of leasing vested in such protected person having a limited estate only on the property over which the power extends;

(h) perform any contract relating to the property of such protected person entered into by him before he became a protected person;

(i) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to such protected person;

(j)

(j) exercise any power or give any consent required for the exercise of any power where the power is vested in such protected person for his own benefit, or the power of consent is in the nature of a beneficial interest in such protected person;

(k) sequestrate the estate of such protected person under the provisions of the bankruptcy laws;

(l) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts;

(m) bring and defend actions, suits, and other proceedings on behalf of such protected person.

Property exchanged and renewed lease to be to same uses as before.
cf. Act No. 45, 1898, s. 151.

83. Any property taken in exchange and any renewed lease accepted pursuant to this Act on behalf of a protected person under the powers of this Act, shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

Extent of leasing power.
cf. *Ibid.* s. 152.

84. (1) The power to authorise leases of a protected person's property under this Act shall extend to property of which the protected person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the protected person, and all persons entitled in remainder and reversion expectant upon the estate tail of the protected person including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the protected person shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the protected person or his committee would have had.

(2) Leases authorised to be granted and accepted by or on behalf of a protected person under this Act may be for such number of lives or such term of years at such rent and subject to such reservations, covenants, and conditions as the Court may order.

(3) Fines or other payments on the renewal of leases may be paid out of the estate of the protected person, or charged with interest on the leasehold property, as the Court may order.

Interest in property of certain persons not to be altered.

cf. Act No. 45, 1898, s. 153.

85. (1) Any patient, protected person or incapable person, his heirs, next of kin, devisees, legatees, executors, administrators, and assigns shall have the same interest in any moneys or other property arising from any sale, mortgage, charge, disposition of any property or other dealing therewith under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made, and the surplus moneys or other property shall be of the same nature as the property sold, mortgaged, charged, disposed of or dealt with.

(2) Moneys received for equality of partition and exchange, and all fines, premiums, and sums of money received upon the grant or renewal of a lease where the property, the subject of the partition, exchange, or lease was real estate of the patient, protected person or incapable person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate, except in the case of fines, premiums and sums of money received upon the grant or renewal of leases of which the patient, protected person or incapable person was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the patient, protected person or incapable person.

(3) In order to give effect to the foregoing provisions of this Act the Court may make such orders and direct such conveyances, deeds, and things to be executed and done as it thinks fit.

Expenses of improvements may be charged on estate.

cf. *Ibid.* s. 154.

86. (1) The Court may order that the whole or any part of any moneys expended or to be expended under its order for the permanent improvement, security, or advantage of the property of a protected person or of any part thereof, shall with interest be a charge upon the improved property or any other property of the protected person, but so that no right of sale or foreclosure during the lifetime of the protected person shall be conferred by the charge, and the interest shall be kept down during his lifetime out of the income of his general estate as far as the same is sufficient to bear it.

(2)

(2) The charge may be made either to some person advancing the money, or, if the money is paid out of the protected person's general estate to some person as a trustee for him as part of his personal estate.

Court may order certain estates to be applied for maintenance.

cf. Act No. 45, 1898, s. 155.

87. Where the net amount or net estimated value of the property of any protected person does not exceed the sum of five hundred pounds, the Court may order the amount of the property or the produce thereof when realised to be paid or transferred to some fit person, to be applied in or towards the maintenance of the protected person, either at the discretion of such fit person, or in such manner, and subject to such control as the Court may direct, and for the purpose of giving effect to any such order the Court may order any real estate or other property whatsoever of the protected person to be sold, and a valid conveyance or transfer thereof to be executed or made by such fit person as it shall direct.

Application of income for temporary maintenance.

cf. *Ibid.* s. 156.

88. (1) Where it appears to the Court that there is reason to believe that the mental illness of any protected person is in its nature temporary. and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of such protected person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income, or of ready money belonging to the protected person, and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as it may think proper for the temporary maintenance of the protected person and the members of his immediate family who are dependent upon him for maintenance, and may order the payment of any such sum of money as aforesaid, or any part thereof, to some fit person, and may direct the same to be paid to such fit person accordingly, and when received to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid.

(2)

(2) The receipt in writing of the person named in the order to whom payment is to be made for any moneys payable to him by virtue thereof shall effectually discharge the banker, agent, or other person paying the same from the moneys therein respectively expressed to be received.

(3) The person so receiving any moneys by virtue of this section shall pass an account thereof before the Master when required.

Court may dissolve partnership.

cf. Act No. 45, 1898, s. 157.

89. Where a person, being a member of a partnership, becomes a protected person the Court may, by order, dissolve the partnership.

Power to carry orders into effect.

cf. *Ibid.* s. 158.

90. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of a protected person, execute, make, and do all such conveyances, deeds, transfers, and things for giving effect to any order under this Act as the Court directs; and every such conveyance, deed, transfer, and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

Committee may act as trustee or guardian in certain cases.

cf. *Ibid.* s. 159.

91. Where a power is vested in a protected person in the character of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the committee of the estate, in the name and on behalf of the protected person, under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

Appointment of new trustees by committee.

cf. *Ibid.* s. 160.

92. Where under this Act the committee of the estate, under order of the Court, exercises in the name and on behalf of a protected person a power of appointing new trustees vested in him the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same

same rights and powers as they would have had if the order had also been made by the Supreme Court under any law for the time being in force relating to trusts; and the Court may in such case where it seems to be expedient make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of any such law as aforesaid on the appointment thereunder of new trustees.

Temporary provision for maintenance.
cf. Act No. 45, 1898, s. 161.

93. In any case where, pending the appointment of a committee, it appears to the Master desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the protected person or any member of his family out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Master may, by certificate, authorise such banker or other person to pay to the person to be named in such certificate such sum as he certifies to be proper; and may, by such certificate, give any directions as to the proper application thereof for the protected person's benefit by that person, who shall be accountable for the same, as the Master directs.

Transfer of stock belonging to certain persons.
cf. *Ibid.* s. 162.

94. Where any stock is standing in the name of or is vested in a protected person beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a protected person in trust for the protected person or as part of his property, and the committee dies intestate or himself becomes a mentally ill person or is out of the jurisdiction, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new committee or as he directs for the space of fourteen days after a request in writing for that purpose made by a new committee, then the Court may order some fit person to transfer the stock to or into the name of a new committee or otherwise, and also to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court directs.

95. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction that a declaration to the effect that such person is a mentally ill person, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock to or into the name of the curator or other person appointed as aforesaid or otherwise, and also to receive and pay over the dividends thereof as the Court thinks fit.

Stock in name of mentally ill persons residing out of State may be ordered to be transferred.

cf. Act No. 45, 1898, s. 163.

96. Where an order is made under this Act for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the company, society or association in whose books the transfer is to be made.

Who shall be appointed to make transfer.

cf. *Ibid.* s. 164.

97. The Court may order the costs and expenses of and relating to the petitions, applications, orders, directions, conveyances, and transfers to be presented or made in pursuance of this Part of this Act to be paid and raised out of or from the property, or the rents, income, or profits in respect of which the same respectively shall be presented or made in such manner as it may think proper; and the Court may order such sum by way of remuneration to be paid out of the estate to the committee of any protected person as the Court may think fit.

Costs and remuneration may be paid out of estate.

cf. *Ibid.* s. 165.

98. Every conveyance, lease, surrender, transfer, charge, or other disposition made or accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons whomsoever; and this Act shall be a full indemnity and discharge to all persons for all acts and things done or permitted to be done in pursuance thereof, or of any order of the Court made or purporting to be made under this Act.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

cf. *Ibid.* s. 166.

99. Nothing in this Act contained shall subject any part of the property of a protected person to the debts or demands of his creditors, further or otherwise than as the same was immediately before the commencement of this Act subject thereto by due course of law.

Act not to subject property of protected persons to debts.

cf. *Ibid.* s. 167.

PART

PART XII.

SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES.

Interpretation and application of Part.

cf. Act No. 45, 1898, s. 167A.

***100.** (1) In this Part of this Act—

"Reciprocating state" means any part of Her Majesty's dominions outside New South Wales which has been declared under subsection two of this section to be a reciprocating state for the purposes of this Part of this Act.

(2) Where the Governor is satisfied that the laws in force in any part of Her Majesty's dominions outside New South Wales are such as to enable powers to be exercised in that part in cases of patients residing in New South Wales substantially similar to the powers conferred by this Part of this Act in cases of mentally ill patients residing in that part, the Governor may by proclamation published in the Gazette declare that part to be a reciprocating state for the purposes of this Part of this Act, and thereupon that part shall become a reciprocating state within the meaning of this Part of this Act.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

(4) References in the foregoing provisions of this section to Her Majesty's dominions outside New South Wales shall be construed as including references to any territory which is under Her Majesty's protection and to any territory the subject of a trusteeship agreement approved by the General Assembly of the United Nations which is under the administration of a government of any part of Her Majesty's dominions.

101.

*See s. 3 (2) (i) and proclamation in Gazette No. 33 of 7th April, 1955, which declared States of Victoria, Queensland and South Australia and the Dominion of New Zealand to be reciprocating states.

101. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property and estates of mentally ill patients in any hospital or other institution situated in that state and authorised for the reception and care of mentally ill persons—

Powers of Master as to property in New South Wales of mentally ill patients in reciprocating state.

cf. Act No. 45, 1898, s. 167B.

(a) certifies in writing under his hand and seal to the Master that any person is a mentally ill patient residing in that state and is confined in any such hospital or other institution and that he is possessed of or entitled to or appears to be entitled to or interested in real or personal property in New South Wales; and

(b) by instrument in writing under his hand and seal authorises the Master to collect, recover, manage, sell or otherwise dispose of and administer such property or to make inquiry respecting such property,

the Master shall have and may exercise over and in respect of such property the same powers of collection, recovery, management, sale, disposition, administration, and inquiry as he would have had and may have exercised over such property if such mentally ill patient had been resident in New South Wales and a patient within the meaning of this Act; and the provisions of this Act apply in respect of such property accordingly.

(2) Where the Master has, pursuant to any such authority as is referred to in paragraph (b) of subsection one of this section and in the exercise of the powers conferred upon him by that subsection, received any moneys or properties, the Master may, after—

(a) payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and

(b)

(b) satisfying or providing for the following debts and claims of which he has notice, namely, debts of the mentally ill patient named in such authority owing to persons resident in New South Wales and the claims of persons so resident against that patient,

pay over or deliver the balance of such moneys or properties to the officer of the reciprocating state who signed such authority or his successor in office, without seeing to the application thereof, and without incurring any liability in respect of such payment over or delivery, and shall duly account to that officer or his successor for that balance.

PART XIII.

COURT VISITORS.

Court may order protected or incapable persons to be visited.

cf. Act No. 45, 1898, s. 168.

102. The Court may by general rule or special order:—

(a) direct the Director or other fit person to visit any protected person or incapable person and to make a report in writing to the Court or a judge of the state of mind and bodily health and general condition, and also of the care and treatment of the person visited;

(b) 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 assets of the person visited, and as to the orders of the Court made in respect thereof;

(c) order that any fees and expenses connected with the visit be paid out of the estate of the person visited.

PART XIV.

MISCELLANEOUS PROVISIONS.

Offences in relation to certificates by medical practitioners.

103. A medical practitioner who signs any certificate in or to the effect of the form set out in Part I of Schedule Two or in Schedule Three without having personally examined the person to whom it relates, at the time specified in such certificate, for the purpose of ascertaining the condition of such person or who wilfully makes any false statement in any such certificate shall be guilty of an offence against this Act.

Medical certificates, requests, etc., may be amended.

104. (1) Any medical certificate, request, recommendation, direction, order, or other document, by virtue of which any person has been admitted to an admission centre, mental hospital or authorised hospital, and which is incorrect or defective in any particular, may, with the approval of the Director, and within twenty-eight days after the admission of such person, be amended by the person who has signed the same; and such medical certificate, request, recommendation, direction, order, or other document as so amended shall thereupon be deemed to have and always to have had effect from its original date.

(2) If such medical certificate, request, recommendation, direction, order, or other document is not so amended, the Director may order the discharge of the person so admitted as aforesaid; or direct the superintendent of such admission centre, mental hospital or authorised hospital to obtain a new medical certificate, request, recommendation, direction, order or other document which shall have and be deemed always to have had effect for all purposes as if it had been obtained, made, and signed on the date on which the medical certificate, request, recommendation, direction, order or other document upon which such person was admitted to such admission centre, mental hospital or authorised hospital was obtained, made and signed.

105.

Patients absent without leave.

105. Where a patient absents himself from any admission centre, mental hospital or authorised hospital otherwise than in accordance with the provisions of this Act the superintendent or any officer, servant or other person employed in such admission centre, mental hospital or authorised hospital, member of the police force or any other person authorised by the Director or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised may escort such patient and return him to such admission centre, mental hospital or authorised hospital.

Penalty on superintendents, officers, etc., ill-treating patients.

106. Any superintendent, officer, servant or other person employed in an admission centre, mental hospital or authorised hospital who strikes, wounds, ill-treats, or wilfully neglects any patient or voluntary patient shall for every such offence, be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any period not exceeding six months, or to both such penalty and imprisonment:

Provided that nothing in this section contained shall prejudice or affect any civil responsibility of the offender arising out of such offence.

Powers of superintendents and official visitors exercisable in respect of places to which they are appointed.

107. The powers, authorities, duties and functions conferred or imposed upon a superintendent of or an official visitor to an admission centre, mental hospital or authorised hospital by or under this Act shall be exercised and performed by him only in respect of that admission centre, mental hospital or authorised hospital and the patients and voluntary patients therein.

Conditions applicable to performance or giving of certain operations or medical treatment upon or to patients.

cf. Act No. 45, 1898, s. 179A.

108. (1) (a) This section shall apply to leucotomy and such other operations or medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2)

(2) No patient shall be subjected to any operation or medical or therapeutic treatment to which this section applies—

(a) by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless the Director has consented to the performance of such operation or the application of such treatment; or

(b) by any other medical practitioner or practitioners unless the Director has consented to the performance of such operation or the application of such treatment by such practitioner or practitioners.

(3) The Director shall not give such consent unless—

(a) he is satisfied upon the report of a superintendent that such operation or treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated, or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient; and

(b) in the case of leucotomy and any other operation or medical or therapeutic treatment in respect of which a Consultative Committee has been constituted as hereinafter provided the appropriate Consultative Committee has recommended the subjection of the patient to such operation or medical or therapeutic treatment.

(4) No patient shall be subjected to any operation or medical or therapeutic treatment referred to in paragraph (b) of subsection three of this section if the person, on whom notice has been served by the Director as hereinafter provided, has within the time prescribed expressed his disapproval of such operation or medical or therapeutic treatment.

Such notice shall state the name of the patient proposed to be subjected to any such operation or medical or therapeutic treatment, the nature of such operation or treatment, and the time within which disapproval may be expressed.

Such notice shall—

(a) where the patient is married and not separated by order of a court or by agreement from his spouse, be served on the spouse;

(b) where the patient is not married or is separated by order of a court or by agreement, be served on the parents or the surviving parent of such patient;

(c) where there is no person on whom notice is required to be served under the foregoing provisions of paragraphs (a) and (b) of this subsection, or the Director is unable to ascertain particulars of the name and whereabouts of any person on whom notice is required to be so served, be served on such person as the Director considers to be the person in whose care, guardianship or custody the patient was prior to his admission to the admission centre, mental hospital or authorised hospital.

Where the Director has reason to believe that any disapproval expressed by any person in accordance with the foregoing provisions of this subsection has been unjustifiably or unreasonably expressed he may refer the matter to the Master for inquiry and determination. Any person who appears to the Master to be interested in the matter may be heard in person or by counsel at any such inquiry.

If the Master is of opinion that such disapproval has been expressed unjustifiably or unreasonably he may order that the patient be subjected to any such operation or medical or therapeutic treatment.

There shall be an appeal to the Full Court of the Supreme Court from any such order in such manner as may be prescribed by rules of Court.

(5) (a) There shall be constituted a Consultative Committee for the purposes of making recommendations to the Director relating to the subjection of patients to the operation of leucotomy.

(b)

(b) The Minister may in respect of any other operation or medical or therapeutic treatment to which the provisions of this section apply constitute a Consultative Committee for the purpose of making recommendations to the Director relating to the subjection of patients to such operation or medical or therapeutic treatment.

(c) Any Consultative Committee constituted pursuant to the provisions of this subsection shall consist of such medical practitioners and other persons as the Minister appoints.

(6) Where in the opinion of a superintendent the delay incurred in obtaining the consent of the Director to the performance or application of any operation or medical or therapeutic treatment to which this section applies would endanger the life of any patient such superintendent may—

(a) himself perform such operation or apply such treatment; or

(b) by writing under his hand consent to the performance of such operation upon or the application of such treatment to such patient by any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or by any other medical practitioner or practitioners named in such consent.

Where a superintendent performs any operation or applies any treatment or consents to such performance or application in accordance with the provisions of this subsection he shall forthwith report in writing to the Director the circumstances of the case.

(7) Any consent given by the Director or of a superintendent under this section shall, for the protection of any medical practitioner performing any operation or applying any treatment in accordance with such consent and of any person concerned with the performance of such operation or

with the application of such treatment, have the same effect as if such consent had been given by the person operated upon or treated while he was not a mentally ill person or in the case of a minor, as if such consent had been given by his parents.

Certain operations or treatments may be performed or applied without consent of patients.

109. (1) (a) This section shall apply to electro convulsive therapy, electro narcosis therapy and insulin shock and such operations and medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2) A patient may be subjected to any operation or medical or therapeutic treatment to which this section applies by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or any other medical practitioner or practitioners notwithstanding that the patient or any other person legally entitled to consent to the operation or medical or therapeutic treatment of the patient has not consented thereto.

(3) No operation or medical or therapeutic treatment to which this section applies shall be performed on or applied to a patient unless the superintendent has determined that such operation or medical or therapeutic treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient.

Any such determination shall be expressed in writing.

110. (1) (a) Any proclamation under section one hundred and eight or one hundred and nine of this Act or subsection two of this section shall— Ancillary provisions to ss. 108 and 109.

(i) be published in the Gazette;

(ii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;

(iii) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) The day so appointed shall not be earlier than the day next following—

(i) the fifteenth sitting day after such proclamation has been laid before both Houses of Parliament if notice of motion for the disallowance of such proclamation is not given in either House of Parliament within fifteen sitting days after such proclamation has been laid before such House; or

(ii) the day upon which a notice of motion for the disallowance of such proclamation duly given in either House of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days.

(c) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation such proclamation shall not take effect.

(2) Any proclamation under section one hundred and eight or one hundred and nine of this Act may be revoked by the Governor by proclamation.

(3) No action claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against Her Majesty, the Director or a superintendent or any member of a medical staff or medical practitioner referred to in sections one hundred and eight and one hundred and nine of this Act for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the enactment of those sections or the giving of any consent by the Director or a superintendent or as a result of any operation or treatment performed or applied in accordance with the provisions of those sections.

(4) In sections one hundred and eight and one hundred and nine of this Act "superintendent" in relation to an authorised hospital the holder of the license for which is not a medical practitioner means any medical practitioner visiting such authorised hospital pursuant to the provisions of section eleven of this Act.

Penalties.

111. (1) Any person guilty of an offence against this Act shall, except where otherwise expressly provided, be liable to a penalty not exceeding one hundred pounds.

(2) Any such penalty may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Regulations.

112. (1) The Governor may make regulations, not inconsistent with this Act, for and with respect to : —

(a) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act;

(b) prescribing the keeping and form of such books, records, registers or other documents or the furnishing of such reports or statistics as may be necessary or convenient for the administration of this Act;

(c)

(c) prescribing the duties, responsibilities, obligations and liabilities of superintendents and medical officers;

(d) all matters relating to correspondence by and with patients including the authorisation of the perusal and withholding of such correspondence;

(e) the general administration of admission centres and mental hospitals;

(f) all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULES.

SCHEDULES.

SCHEDULE ONE.

No. of Act.	Name of Act.	Extent of Repeal.
1898, No. 45	Lunacy Act of 1898	The whole.
1924, No. 10	Crimes (Amendment) Act, 1924 ...	Section twenty-nine.
1934, No. 39	Lunacy (Amendment) Act, 1934 ...	The whole.
1937, No. 37	Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937	Section four.
1944, No. 19	Public Service (Amendment) Act, 1944	Section three.
1944, No. 38	Lunacy (Amendment) Act, 1944 ..	The whole.
1945, No. 33	Lunacy (Amendment) Act, 1945 ..	The whole.
1946, No. 38	Lunacy (Amendment) Act, 1946 ..	The whole.
1947, No. 41	Jury (Amendment) Act, 1947 ..	Subsection three of section eight.
1949, No. 43	Mental Institution Benefits Agreement Act, 1949	Section three.
1952, No. 31	Lunacy (Amendment) Act, 1952 ..	The whole.
1955, No. 3	Lunacy (Amendment) Act, 1955 ..	The whole.

SCHEDULE TWO.

MENTAL HEALTH ACT, 1958.

MEDICAL CERTIFICATE.

Part I.

I, ..., of
(*name in full*)

..... (Medical Practitioner)
(*address*)

do hereby certify that on the ..... day of .....

19 , at .....
(*state place where examination took place*)

I personally examined .....
(*name of person in full*)

and I am of the opinion that the said person is a mentally ill person and is a suitable case for admission to the Admission Centre at ..... for observation and treatment.
(*name of Institution*)

*In

*In my opinion the said person is:— *Strike out and initial any of the conditions that are not applicable.

(a) suicidal

(b) dangerous to others

(c) unable to care for himself

(d) not under proper care and control.

The following treatment and medication (*if any*) has been administered in respect of the mental illness of the said ....., viz.

So far as I am aware—

(a) the bodily health and condition of the said .... is ..... and

(b) the said ..... *has / has not suffered any recent injury. *Strike out words inapplicable.

If the said ..... has suffered recent injury the particulars of such injury are as follows:—

Made and signed this ..... day of ....., 19 .

Signature.....

Part II.

If the assistance of a member of the Police Force is required this Part of the Schedule should be completed.

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the said ..... to the Admission Centre at .....

Made and signed this ..... day of ..... 19 .

Signature.....

SCHEDULE

SCHEDULE THREE.

MENTAL HEALTH ACT, 1958.

I, the undersigned, being a medical practitioner, hereby certify that I, on the ..... day of ....., 19 , at *..... ..... separately from any other medical practitioner, personally examined .... of †....., whose occupation is ..... and that the said ..... is mentally ill and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:—

(1) Facts indicating mental illness observed by myself.

(2) Other facts (if any) indicating mental illness communicated to me by ‡

Dated at ..... this .....day of ....., 19 .

Signature.....

Place of abode.....

*Insert name and address of place of examination.

†Insert residence.

‡State full names and addresses of every communicant.

SCHEDULE FOUR.

MENTAL HEALTH ACT, 1958.

WHEREAS it has been duly certified under section .... of the Mental Health Act, 1958, that ..... a prisoner in the ..... is mentally ill, I, the Minister for Health, exercising the powers conferred upon me under the said Act, hereby order that the said ..... be removed to the Mental Hospital at ..... to remain there until he is certified to be not mentally ill and dealt with in accordance with the said section.

Given under my hand the ..... day of ..... 19 .

.....

Minister for Health.

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By Authority:
V. C. N. BLIGHT, Government Printer, Sydney, 1961

I certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE ASSEMBLY, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 10 *December,* 1958.

New South Wales

ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. 45, 1958.

An Act to make provision with respect to the care, treatment and control of persons who are mentally ill and the management of their estates; to repeal the Lunacy Act of 1898 and certain other Acts; and for purposes connected therewith. [Assented to, 31st December, 1958.]

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 : —

PART I.

PRELIMINARY.

Short title and commencement.

1. (1) This Act may be cited as the "Mental Health Act, 1958".

(2)

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Division into Parts.

2. This Act is divided into Parts as follows: —

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–8.

PART III.—ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 9–11.

PART IV.—ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS—*ss.* 12–15.

PART V.—DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION—*ss.* 16–20.

PART VI.—VOLUNTARY PATIENTS—*ss.* 21–22.

PART VII.—MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES—*ss.* 23–33.

PART VIII.—WELFARE OFFICERS—*s.* 34.

PART IX.—OFFICIAL VISITORS—*ss.* 35–36.

PART X.—PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES—*ss.* 37–50.

PART XI.—MANAGEMENT OF ESTATES OF PATIENTS AND CERTAIN OTHER PERSONS—*ss.* 51–99.

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Division 2.—*Powers and Duties of Master in Respect to Estates of Patients*—*ss.* 59–80.

Division 3.—*Management of Estates of Certain Persons not being Patients*—*ss.* 81–99.

PART XII.—SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES—*ss.* 100–101.

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PART XIII.—COURT VISITORS—*s.* 102.

PART XIV.—MISCELLANEOUS PROVISIONS—*ss.* 103–112.

SCHEDULES.

3. (1) The several Acts mentioned in Schedule One to this Act are to the extent therein expressed hereby repealed. Repeals and savings.

(2) (a) The persons who immediately before the commencement of this Act held office as the Inspector-General of the Insane, Deputy Inspector-General and Deputy Master in Lunacy shall be deemed as from such commencement to have been appointed by the Governor as the Director, Deputy Director and Deputy Master in the Protective Jurisdiction of the Supreme Court, respectively.

(b) All persons who immediately before the commencement of this Act held office as superintendents, deputy superintendents, medical officers or otherwise under the Acts hereby repealed shall continue to hold office as such as from such commencement.

(c) All persons who immediately before the commencement of this Act held office as official visitors under the Acts hereby repealed shall be deemed to have been appointed as such under this Act :

Provided that any such official visitor who has at such commencement attained the age of seventy years shall upon such commencement be deemed to have vacated his office as such.

(d) All reception-houses appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be admission centres.

(e) All hospitals for the insane or for the criminal insane appointed or deemed to have been appointed as such under the Acts hereby repealed, the appointment of which has not been revoked at the commencement of this Act, shall be deemed to be mental hospitals.

(f) Any house for the reception of insane patients in respect of which a license granted under the Acts hereby repealed is in force at the commencement of this Act shall be deemed to be licensed as an authorised hospital until such license would have expired but for the provisions of this Act or is sooner revoked in like manner as a license for an authorised hospital may be revoked.

(g) All persons who immediately before the commencement of this Act were incapable persons, insane patients or patients, and insane persons within the meaning of the Acts hereby repealed shall respectively be deemed to be incapable persons, patients and protected persons within the meaning of this Act.

(h) The care, protection, administration and management of the estate of any person which immediately before the commencement of this Act was exercised by a committee of the estate of such person, a person appointed to undertake the care and management of such estate or the Master in Lunacy may continue to be exercised by such committee, person so appointed or the Master under and subject to the provisions of this Act.

(i) All rules of Court, regulations and proclamations made or deemed to have been made under the Acts hereby repealed and in force at the commencement of this Act shall, until varied or rescinded under this Act, continue in force and shall be deemed to have been made under this Act.

(j) All proceedings initiated, pending or part heard under the Acts hereby repealed at the commencement of this Act shall be continued as if such proceedings had been taken or initiated under this Act.

Interpretation.

4. In this Act, unless the context or subject matter otherwise indicates or requires: —

"Admission centre" means a place appointed to be an admission centre under this Act.

"Authorised

"Authorised hospital" means a hospital in respect of which a license granted to any person under Part III of this Act is for the time being in force.

"Committee" means committee appointed under this Act.

"Continued treatment patient" means a patient in respect of whom an order has been made under section fourteen of this Act that he be reclassified as a continued treatment patient and be detained in an admission centre, mental hospital or authorised hospital.

"Court" means the Supreme Court in its Protective Jurisdiction.

"Director" means Director of State Psychiatric Services appointed under this Act.

"Incapable person" means any person who is proved to the satisfaction of the Court under section thirty-nine of this Act to be through mental infirmity, arising from disease or age, incapable of managing his affairs.

"Judge" means judge of the Court.

"Justice" means justice of the peace.

"Manager" means the person appointed under section thirty-nine of this Act to undertake the care and management of the property of an incapable person.

"Master" means Master in the Protective Jurisdiction of the Supreme Court.

"Mental hospital" means a place appointed to be a mental hospital under this Act.

"Mentally ill person" means a person who owing to mental illness requires care, treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs and "mentally ill" has a corresponding meaning.

"Patient"

"Patient" means any person admitted to and detained in any admission centre, mental hospital, or authorised hospital in accordance with the provisions of this Act and includes any person so admitted and detained while absent from such admission centre, mental hospital or authorised hospital either with or without leave of absence, but does not include a voluntary patient or, in Part V of this Act, except as provided in subsection three of section nineteen of this Act, a person detained in a mental hospital pursuant to Part VII of this Act.

"Prescribed" means prescribed by this Act or the regulations.

"Prison" means prison within the meaning of the Prisons Act, 1952.

"Protected person" means a person in respect of whom a declaration under section thirty-eight of this Act is in force.

"Regulations" means regulations made under this Act.

"Schedule" means Schedule to this Act.

"Stock" means any share or other interest in any company, society or association, and any fund, annuity or security transferable in books kept by any company, society or association, or transferable by deed alone, or by deed accompanied by other formalities, and any money payable for the discharge or redemption thereof, and any share or interest therein.

"Superintendent" means superintendent of any admission centre, mental hospital or authorised hospital.

"Tribunal" means a Mental Health Tribunal constituted under section thirteen of this Act.

"Voluntary patient" means any person who has been admitted to an admission centre, mental hospital or authorised hospital under section twenty-one of this Act.

"Welfare officer" means a person appointed as a welfare officer under section thirty-four of this Act.

5. As from the commencement of this Act, in the construction, and for the purposes, of any Act, by-law, regulation, ordinance or any other instrument of the same or a different kind or nature, any reference to, or to be read, deemed and taken to refer to— References to certain words and expressions —how to be construed.

(a) any word or expression, within the meaning of the Acts hereby repealed, specified in the first column of the Schedule hereunder or to any like word or expression shall be read, deemed and taken to refer to the word or expression appropriate thereto specified in the second column of such Schedule unless the context or subject matter otherwise indicates or requires.

THE SCHEDULE.

First Column.	Second Column.
Insane, lunatic, insane patient, patient, incapable person, insane person, committee of the estate of an insane person, manager of the estate of an incapable person, Master in Lunacy, Lunacy Act of 1898, Inspector-General of the Insane, Deputy Inspector-General, Chief Clerk in Lunacy, Supreme Court in its Lunacy Jurisdiction, hospital for the insane, hospital for the criminal insane, reception house, licensed house.	Mentally ill, mentally ill person, patient, incapable person, protected person, committee of the estate of a protected person, manager of the estate of an incapable person, Master in the Protective Jurisdiction of the Supreme Court, Mental Health Act, 1958, Director, Deputy Director, Chief Clerk in the Protective Jurisdiction of the Supreme Court, Supreme Court in its Protective Jurisdiction, mental hospital, admission centre, authorised hospital.

(b) any of the provisions of the Acts hereby repealed shall be read, deemed and taken to refer to the corresponding provisions (if any) of this Act.

Protective Jurisdiction of Supreme Court.

6. There shall be a Protective Jurisdiction of the Supreme Court.

The jurisdiction which immediately before the commencement of this Act was exercisable by the Supreme Court in its Lunacy Jurisdiction shall be exercised by the Supreme Court in its Protective Jurisdiction.

PART II.

ADMINISTRATION.

Director of State Psychiatric Services.

7. (1) The Governor may appoint a Director of State Psychiatric Services and a Deputy Director of State Psychiatric Services, who shall have and may exercise and perform all the powers, authorities, duties and functions of the Director during his absence for any cause whatsoever.

(2) The Director shall from time to time visit and inspect every admission centre, mental hospital and authorised hospital with or without previous notice and at any time of the day or night as he thinks fit.

The Director may at any time make such inspections, investigations, and inquiries as he deems necessary, and shall make such inspections, investigations and inquiries as are directed by the Minister, with respect to the care, treatment or control of patients and voluntary patients or with respect to the management of any admission centre, mental hospital or authorised hospital.

(3) (a) The Director visiting any admission centre, mental hospital or authorised hospital may, by notice in writing, require any person to furnish him with such information as he requires concerning any of the matters with respect to which the Director is by this Act authorised to make inspections, investigations or inquiries or to attend and give evidence before him concerning any such matters, and to produce all books, documents or other papers whatever in such person's custody or under his control relating thereto.

(b)

(b) The Director may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he may administer an oath.

(c) Any person who without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Director or to answer truly and fully any questions put to him, or to produce any book, document or papers required of him by the Director, shall be guilty of an offence against this Act.

(4) (a) Any Director or Deputy Director who has any pecuniary interest, directly or indirectly, in any authorised hospital shall be deemed guilty of misconduct within the meaning of the Public Service Act, 1902, as amended by subsequent Acts.

(b) A Director or Deputy Director shall not sign any certificate or recommendation for the admission of any patient into or for the further observation and treatment of any patient in any admission centre, mental hospital or authorised hospital.

(5) The Director shall furnish to the Minister an annual report in writing as to the state and condition of the several admission centres, mental hospitals and authorised hospitals and as to the care of the patients and voluntary patients therein, and as to such other particulars as he thinks fit, and a true copy of such report shall forthwith be laid before Parliament if then in session, or if not then in session, within twenty-one sitting days after the commencement of the next session of Parliament.

Medical superintendents.

8. The Governor may appoint a medical superintendent for each admission centre and mental hospital and if he thinks fit a deputy medical superintendent therefor. No person shall be so appointed unless he is a medical practitioner.

A deputy medical superintendent shall have and may exercise and perform all the powers, authorities, duties and functions of the superintendent during his absence for any cause whatsoever.

PART

PART III.

ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Admission centres.

9. The Governor may, by notification in the Gazette, appoint any place to be a place for the admission and temporary treatment of mentally ill persons and every such place shall be an admission centre for mentally ill persons. Any such appointment may be revoked in like manner.

Mental hospitals.

10. The Governor may, by notification in the Gazette, appoint any place to be a mental hospital and in and by such notification may assign a name to such hospital. Any such appointment may be revoked in like manner.

Authorised hospitals.

11. (1) The Minister on the recommendation of the Director may, subject to the provisions hereinafter contained, by writing under his hand in or to the effect of the prescribed form grant to any person or to two or more persons jointly, a license to keep a hospital for the admission and treatment of a number of patients and voluntary patients not exceeding the number specified in such license.

Any such license shall be in force for a period of twelve months but may be renewed from time to time for a further period of twelve months.

(2) Applications for a license under this section shall be made to the Minister, shall be in or to the effect of the prescribed form and shall be accompanied by a plan of the premises in respect of which the license is desired.

(3) The Minister may, for good cause, revoke any such license. One month's notice in writing of the proposed revocation shall be given by the Minister to the holder of such license.

(4) If after the expiration of two months from the termination of a license, whether by effluxion of time or revocation thereof, there is in any authorised hospital in respect of which such license has so terminated any patient or voluntary patient, every person keeping such hospital shall be guilty of an offence against this Act.

(5)

(5) No person (unless he is a person who derives no profit therefrom, or a committee, or manager, or otherwise authorised under this Act) shall receive to board or lodge in any house, or take the care or charge of, any patient or voluntary patient.

(6) The holder of a license under this section shall where the authorised hospital in respect of which he holds such license—

(a) has more than one hundred patients and voluntary patients have at all times a medical practitioner resident therein;

(b) has more than fifty but not more than one hundred patients and voluntary patients cause a medical practitioner to attend such authorised hospital daily;

(c) has fifty or less patients and voluntary patients cause a medical practitioner to attend such authorised hospital at least twice a week, or where such number of patients and voluntary patients is less than ten and the Minister authorises the holder of the license to cause a medical practitioner to attend such authorised hospital at specified intervals less frequently than twice a week cause a medical practitioner to attend accordingly.

The medical practitioner resident in an authorised hospital pursuant to paragraph (a) of this subsection shall be the superintendent of such hospital. Where there is no medical practitioner resident in any authorised hospital the holder of the license for such hospital shall be the superintendent of such hospital.

(7) The superintendent of any authorised hospital shall cause to be kept such records and furnish to the Director such particulars as are prescribed in connection with the admission, treatment, discharge, removal, absence with or without leave or death of every patient and voluntary patient admitted to such authorised hospital.

(8) The holder of a license shall not make or cause to be made any additions or alterations to the authorised hospital for which he holds such license without the approval in writing of the Minister.

PART IV.

ADMISSION TO ADMISSION CENTRES, MENTAL HOSPITALS AND AUTHORISED HOSPITALS.

Procedure for admitting persons to admission centres.

12. (1) A person may be admitted to and detained in an admission centre—

(a) upon the certificate of a medical practitioner who is of the opinion that such person is a mentally ill person;

(b) upon a written request to be so admitted and detained made by him to the superintendent of such admission centre;

(c) upon a written request for him to be so admitted and detained made to the superintendent of such admission centre by a relative or friend of such person;

(d) where he is taken to such admission centre by a member of the police force and a copy of an order, relating to such person, made by a justice under subsection two or three of this section is handed to the superintendent of such admission centre by such member of the police force;

(e) where he is taken to such admission centre by a member of the police force who in writing informs the superintendent of such admission centre that such

such member believes such person to be a mentally ill person and that such member found such person wandering at large or committing some offence against the law or in circumstances which reasonably led him to believe that such person was about to commit some offence against the law:

Provided that a person admitted to or detained in an admission centre pursuant to paragraph (b), (c), (d) or (e) of this subsection shall be examined by the superintendent or a medical officer attached to such admission centre as soon as practicable after his admission thereto and shall not be detained therein after such examination unless such superintendent or medical officer certifies that in his opinion such person is a mentally ill person.

(2) Where a person informs a justice on oath that—

(a) he believes any other person to be a mentally ill person, and

(b) such other person is without sufficient means of support, or is wandering at large, or has been discovered committing some offence against the law or in circumstances which may reasonably lead a person to suspect that such other person was about to commit some offence against the law,

such justice may by order under his hand require a member of the police force to apprehend such other person and to take him to the nearest convenient admission centre.

(3) A member of the police force or welfare officer shall, and any other person may, if he believes that a person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the care and charge of him, so inform a justice on oath. Such justice shall either himself visit and examine the person in respect of whom he has been informed as aforesaid and make inquiry into the case, or by order under his hand direct and authorise some medical practitioner to visit and examine such person and report in writing

writing to such justice his opinion as to the matters of which such justice has been informed as aforesaid. If upon such visit, examination and inquiry by such justice, or upon the report of such medical practitioner it appears to such justice that such person is a mentally ill person and either is not under proper care and control, or is cruelly treated or cruelly neglected by any person having or assuming the control of him, such justice may by order under his hand require any member of the police force to take such person to the nearest convenient admission centre.

(4) The superintendent of an admission centre shall as soon as practicable after the admission of a person to such admission centre cause such person to be examined by two medical practitioners separately and apart from each other.

If either of such two medical practitioners does not recommend that further observation and treatment of such person in a mental hospital is necessary the superintendent shall cause such person to be examined by another medical practitioner.

Where the superintendent is not a person who gave a certificate pursuant to the proviso to subsection one of this section in respect of such person, such superintendent may be one of the medical practitioners aforesaid.

A medical practitioner upon whose certificate or request a person has been admitted to an admission centre shall not make any examination of such person for the purposes of this subsection.

(5) If after examination as aforesaid two medical practitioners recommend that further observation and treatment of such person in a mental hospital or authorised hospital is not necessary, such person shall be discharged from such admission centre.

(6) If after examination as aforesaid two medical practitioners recommend that further observation and treatment in a mental hospital or authorised hospital is necessary, such superintendent shall cause such person to be brought as soon as conveniently may be before a stipendiary magistrate.

Such recommendation shall be in or to the effect of the prescribed form.

(7) Where a medical practitioner making any examination of any person as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon making any recommendation that further observation and treatment of such person is necessary as aforesaid disclose that fact and give particulars thereof in such recommendation.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(8) The superintendent shall give due notice to the nearest known relative or a friend of such person of his intention to have such person brought before a stipendiary magistrate.

(9) The stipendiary magistrate shall upon such person being brought before him hold an inquiry and if he is satisfied after consideration of the recommendations by the medical practitioners as aforesaid and such other evidence as may be placed before him, that such person is a mentally ill person, he shall—

(a) direct that such person be detained in an admission centre, or be admitted to and detained in a mental hospital or authorised hospital, to be specified in such direction for further observation and treatment as a temporary patient for such period not exceeding six months as may be specified therein; or

(b)

(b) order the discharge of such person to the care of any relative or friend who satisfies such stipendiary magistrate that such person will be properly taken care of.

Where pursuant to an inquiry as aforesaid such stipendiary magistrate is not satisfied that such person is a mentally ill person he shall order that such person be discharged from such admission centre.

Such stipendiary magistrate may suspend the execution of any such direction or order for any period not exceeding fourteen days, and may give such directions for the proper care and control of such person in the meantime as such stipendiary magistrate thinks fit.

Where any medical practitioner certifies in writing after examining such person that such person is not fit to be moved from the admission centre in which he is then detained, such person shall not be moved from such admission centre until the same or some other medical practitioner certifies in writing that such person is fit to be moved as aforesaid.

(10) Any certificate given by a medical practitioner for the purposes of paragraph (a) of subsection one of this section shall be in or to the effect of the form set out in Part I of Schedule Two.

Where a medical practitioner giving any certificate as aforesaid has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative or partner or assistant who has any such interest in any authorised hospital he shall upon giving that certificate disclose that fact and give particulars thereof in such certificate.

In this subsection "near relative" means parent, brother, sister, child, or spouse, and such other person as may be prescribed as a near relative.

(11) Where a medical practitioner is of the opinion that the assistance of a member of the police force is desirable in conveying a person, in respect of whom such medical practitioner has signed any such certificate, to an admission centre he may endorse such certificate in or to the effect of Part II of the form set out in Schedule Two.

Any

Any member of the police force to whose notice any such endorsement is brought shall as soon as practicable convey or assist in conveying such person to an admission centre or cause or make arrangements for some other member of the police force to convey or assist in conveying such person to an admission centre.

(12) Any direction or order given by a stipendiary magistrate, and any order given by a justice, pursuant to any of the provisions of this section, shall be in or to the effect of the appropriate prescribed form and shall have effect according to its tenor.

Mental Health Tribunals.

13. For the purposes of this Part of this Act there shall be such number of Mental Health Tribunals as the Minister may constitute.

A Tribunal shall consist of :—

(a) a psychiatrist;

(b) a medical practitioner; and

(c) a barrister or solicitor.

Temporary patients to be brought before Tribunal.

14. (1) If at the expiration of six months from the date of his admission to an admission centre, mental hospital or authorised hospital a temporary patient is still detained in an admission centre, mental hospital or authorised hospital, the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment;

(b) whether such patient should be detained in an admission centre, mental hospital or authorised hospital for further observation and treatment as a temporary patient for such period not exceeding three months as the Tribunal shall specify in such determination; or

(c)

(c) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(2) Where a Tribunal has made a determination under paragraph (b) of subsection one of this section and the patient in respect of whom such determination has been made is at the expiration of the period specified in such determination still detained in an admission centre, mental hospital or authorised hospital the superintendent shall as soon as practicable cause such patient to be brought before a Tribunal for examination.

The Tribunal shall determine—

(a) whether such patient should be reclassified as a continued treatment patient and detained in an admission centre, mental hospital or authorised hospital for further observation and treatment; or

(b) whether such patient should be discharged from the admission centre, mental hospital or authorised hospital in which he is detained.

(3) Any determination under this section shall be embodied in an order in the prescribed form and any such order shall have effect according to its tenor.

Medical reviews by superintendents.

15. It shall be the duty of the superintendent to medically examine or cause to be medically examined, at such intervals as may be prescribed, all continued treatment patients with a view to determining whether or not their continued detention in an admission centre, mental hospital or authorised hospital is necessary.

PART V.

DISCHARGE, LEAVE AND TRANSFER OF PATIENTS AND APPEAL AGAINST DETENTION.

Discharge of patients by superintendent.

16. The superintendent—

(a) may at any time, if in his opinion further observation and treatment of a patient is not required, discharge such patient;

(b) may discharge a patient pursuant to an application in that regard made by such patient or by any relative or friend of such patient, whether or not, in the case of an application made by a relative or friend of such patient, an undertaking in writing has been given to the superintendent by such relative or friend that such patient will be properly taken care of and will be prevented from injuring himself or other persons; and

(c) shall so discharge a patient where an order for the discharge of such patient has been made under this Act by the Tribunal, the Director, a judge, a stipendiary magistrate, or the official visitors.

Appeal against superintendent's refusal to discharge patient.

17. Where the superintendent has refused an application for the discharge of a patient as aforesaid, such patient, or relative or friend of such patient, making such application may, in the case of a temporary patient, if a period of three months has elapsed since the date of admission of such patient to an admission centre, mental hospital or authorised hospital, and in the case of a continued treatment patient, at any time, appeal against such refusal to the Director or any two or more official visitors.

The Director or official visitors to whom such appeal is made shall consider the circumstances of the case and the report on the case obtained from the superintendent (which report the superintendent shall give when required by the Director or any such official visitors) in which his reasons for refusing the application are stated, and may, if he or they think

think fit, order the discharge of such patient from the admission centre, mental hospital or authorised hospital, in which he is detained.

Judge may order discharge of patient.

18. Where a judge receives information upon oath, or has reason or cause to suspect that any person who is not a mentally ill person is detained in any admission centre, mental hospital or authorised hospital such judge may order the superintendent of such admission centre, mental hospital or authorised hospital to bring such person before him for examination at a time to be specified in such order, and if upon the examination of such person, and of such superintendent, and of any medical or other witnesses, it appears to such judge that such person is not a mentally ill person, such judge may order that such person be immediately discharged from such admission centre, mental hospital or authorised hospital.

Patient may be permitted to be absent in certain circumstances.

19. (1) The superintendent may allow a patient to be absent from an admission centre, mental hospital or authorised hospital for such period as the superintendent may think fit, or for such period and at such place and on such conditions as the superintendent may think fit for the benefit of the patient's health.

(2) Where any patient is so allowed to be absent and does not—

(a) at the expiration of such period return to the admission centre, mental hospital or authorised hospital from which he has been so allowed to be absent and a certificate of a medical practitioner certifying that the detention of such patient as a patient is no longer necessary is not received by the superintendent before the expiration of such period, or

(b) comply with any condition upon which he is so allowed to be absent,

such patient may at any time after the expiration of such period or non-compliance with any such condition, as the case may be, be apprehended by a member of the police force and returned to such admission centre, mental hospital or authorised hospital.

(3)

(3) In this section "patient" includes a person detained in a mental hospital pursuant to section thirty-two of this Act.

Transfer of patients.

20. The Director may by order in writing direct the transfer of a patient from the admission centre, mental hospital or authorised hospital in which he is detained to an admission centre, mental hospital or authorised hospital. Any such order for transfer shall be a sufficient authority for the transfer of such patient and for his being received into and detained in the admission centre, mental hospital or authorised hospital to which he is ordered to be transferred.

PART VI.

VOLUNTARY PATIENTS.

Voluntary patients.

21. (1) A person may be admitted to and detained in an admission centre, mental hospital or authorised hospital as a voluntary patient—

(a) where such person is of or above the age of twenty-one years, upon an application in that behalf made by him;

(b) where such person is under the age of twenty-one years, upon an application in that behalf made by the person in whose care and custody he may be.

Such application shall be in writing and be made to the superintendent of such admission centre, mental hospital or authorised hospital.

(2) A superintendent shall, subject to the provisions of this section, discharge a voluntary patient within seven days after an application in writing for his discharge has been made to such superintendent—

(a) where such voluntary patient is of or above the age of twenty-one years, by such voluntary patient or some person on his behalf;

(b)

(b) where such voluntary patient is under the age of twenty-one years, by the person upon whose application he was admitted to and detained in an admission centre, mental hospital or authorised hospital pursuant to subsection one of this section.

(3) No person shall be admitted to an admission centre, mental hospital or authorised hospital under this section unless the superintendent is satisfied that such person is likely to be benefited by his being so admitted for care and treatment as a voluntary patient.

(4) A superintendent may—

(a) grant leave of absence to any voluntary patient;

(b) discharge any voluntary patient;

(c) if the condition of the voluntary patient so requires cause such action to be taken as may be necessary to have such voluntary patient admitted to and detained in an admission centre as a temporary patient.

Master may take charge of estates of voluntary patients in certain circumstances.

22. (1) The Master may take charge of the estate of a voluntary patient—

(a) who is of or above the age of twenty-one years, if he is requested so to do by such voluntary patient;

(b) who is under the age of twenty-one years, if he is requested so to do by the person on whose application such voluntary patient was, pursuant to subsection one of section twenty-one of this Act, admitted to and detained in an admission centre, mental hospital or authorised hospital.

(2) Where, pursuant to this section, the Master takes charge of the estate of a voluntary patient, he shall have in respect thereof all the powers, authorities, duties and functions which he has under Part XI of this Act in respect of the estate of a patient.

PART

PART VII.

MENTALLY ILL PERSONS UNDER DETENTION FOR VARIOUS OFFENCES.

23. (1) If any person indicted for any offence is mentally ill and, upon arraignment, is found to be so by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person is found by the jury, before whom he is tried, to be mentally ill, the judge before whom any such person is brought to be arraigned or tried as aforesaid may direct such finding to be recorded, and thereupon may order such person to be kept in strict custody in such place and in such manner as to such judge may seem fit until he is dealt with as provided by section twenty-four of this Act.

Procedure where persons charged with offences are found to be mentally ill by a jury or acquitted on the ground of being mentally ill. cf. Act No. 45, 1898, s. 65.

(2) In all cases where it is given in evidence upon the trial of any person charged with any treason, felony or misdemeanour that such person was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill, and such person is acquitted, the jury shall be required to find specially whether such person was at such time mentally ill and to declare whether such person was acquitted by them on the ground that he was at such time mentally ill.

In this subsection "mentally ill" means, in relation to any person charged as aforesaid, so insane as not to be responsible, according to law, for the act or omission the subject of the charge.

(3) If the jury find that such person was at the time the act or omission the subject of the charge was done or omitted to be done mentally ill as aforesaid, the judge before whom such trial is had shall order such person to be kept in strict custody, in such place and in such manner as to such judge seems fit until the Governor's pleasure is known, and thereupon the Governor may give such order for the safe custody of such person during the Governor's pleasure in a prison as the Governor deems fit.

(4) Upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, the Governor, by warrant under his hand, may direct that such person be conveyed to and detained in a mental hospital during the Governor's pleasure.

Persons found to be mentally ill before trial to be sent to mental hospital.

cf. Act No. 45, 1898, s. 66.

24. (1) When any person committed to take his trial for any offence is certified by two medical practitioners to be mentally ill, such certificates to be in or to the effect of the form of Schedule Three, or is upon arraignment found by verdict to be mentally ill, the Minister may direct, by order under his hand in or to the effect of the form of Schedule Four, that such person be removed to, and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall order his removal to a prison in order to be tried for such offence or if he is not to be so tried order that he be discharged.

(2) Such detention for any period shall not operate as a bar to his subsequent indictment and trial for such offence.

Procedure in reference to certain persons under detention appearing to be mentally ill.

cf. *Ibid.* s. 67.

25. If any person while detained in any prison for debt, or in any prison, or other place of confinement, in consequence of any summary conviction or order by any justice or in default of bail, appears to be mentally ill, the Minister may, upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct, by order under his hand, that such person be removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill whereupon the Minister shall, if such person remains subject to be continued in custody, order his removal to the prison or other place from where he was taken, or to some other prison or place of confinement, or if such person does not remain subject to be continued in custody order that he be discharged.

Order by Attorney-General for trial of issue whether patient fit to plead if placed upon trial.

cf. Act No. 45, 1898, s. 67A.

26. (1) In any case in which a person charged with an offence for which he has not been tried (in this section referred to as "the person charged") is detained in a mental hospital the Attorney-General, if he is of opinion that the question whether the person charged is fit to plead if put upon his trial should be determined by a jury, may by order under his hand direct that the person charged be removed from such mental hospital to some prison appointed by the Attorney-General and specified in the order.

(2) Such order shall be a sufficient warrant for the removal of the person charged from the hospital in which he is detained and for his detention in the prison appointed by the Attorney-General and specified in the order.

(3) The Attorney-General may further order that a jury of twelve persons be empanelled for trial of an issue whether the person charged is fit to plead if placed upon his trial.

(4) The said issue shall be tried at a time and place appointed by the Attorney-General before a judge of the Supreme Court or a chairman of Quarter Sessions.

(5) The governor of the prison in which the person charged is detained shall procure the attendance of the person charged at the time and place appointed for the trial of the said issue.

(6) At the request of the Clerk of the Peace the Sheriff shall summon thirty-six persons, chosen by him from the list of jurors in the jurors' list for the jurors' district within which the place appointed for the trial of the said issue is situated, to attend at the time and place appointed for the trial of the said issue.

(7) A jury of twelve persons shall be empanelled from the jurors in attendance at the court and the said issue shall be tried in accordance with the procedure adopted at a criminal trial where upon the trial of an indictment a question is raised whether the accused is fit to plead. The judge presiding at the trial shall have power to make any order including a power of postponement and give any directions which

which in his opinion are necessary for the trial of the issue. The jurors empanelled to try the issue shall be sworn in such manner as the court shall direct.

(8) If the jury find that the person charged is not fit to plead he shall be returned to the hospital from which he was removed.

(9) If the jury find that the person charged is fit to plead he shall be returned to prison.

(10) If a bill is found against him he shall be placed upon his trial.

(11) If a bill is not found against him a certificate shall be issued by the Attorney-General to the judges of the Supreme Court in accordance with the provisions of section three hundred and fifty-eight of the Crimes Act, 1900, as amended by subsequent Acts, and any of the said judges may thereupon direct the gaoler in whose custody the person charged may be to discharge him from custody.

(12) At the trial of the said issue the person charged shall be entitled to give evidence on oath or to make an unsworn statement.

(13) If the jury find that the person charged is fit to plead and he is placed upon his trial he shall be entitled to set up the defence that he was, at the time the act or omission the subject of the charge was done or omitted to be done, mentally ill.

In this subsection "mentally ill" has the meaning ascribed thereto in subsection two of section twenty-three of this Act.

Procedure on certain prisoners appearing to be mentally ill.

cf. Act No. 45, 1898, s. 68.

27. If any person while imprisoned in any prison, under any sentence of hard labour or imprisonment imposed otherwise than on the conviction or order of justices appears to be mentally ill the Minister may upon the receipt of certificates by two medical practitioners in or to the effect of the form of Schedule Three, direct by order under his hand in or to the effect of the form of Schedule Four, that such person be removed

removed to and detained in a mental hospital until such person is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall if such person remains subject to be continued in custody, order his removal to the prison from where he was taken, or to some other prison, or if such person does not remain subject to be continued in custody order that he be discharged.

Procedure on prisoners under sentence of death appearing to be mentally ill. cf. Act No. 45, 1898, s. 69.

28. If it is made to appear to the Minister by any means whatsoever that there is good reason to believe that any prisoner in confinement under sentence of death is then mentally ill, the Minister may appoint two or more medical practitioners to inquire into the mental health of such prisoner, and if on such inquiry such prisoner is found to be then mentally ill, the fact shall be certified in writing by such practitioners to the Minister, and on receipt of such certificate the Minister may, by order under his hand, direct that such prisoner be removed to and detained in a mental hospital until such prisoner is certified by the superintendent and the Director, or by the superintendent and two official visitors, to be not mentally ill, whereupon the Minister shall order that such person be removed to any prison or other place of confinement to undergo his sentence of death or to be dealt with according to law, as if no such order for his removal to and detention in a mental hospital had been made.

Governor may liberate on conditions. cf. *Ibid.* s. 72.

29. When any person is ordered to be kept in custody during the Governor's pleasure, any order made by the Governor in relation to the custody of such person may be renewed and varied from time to time or revoked; and the Governor may permit any such person or any person conveyed to and detained in a mental hospital pursuant to a direction by the Governor, not being a person under conviction and sentence, to be liberated from custody or such mental hospital, upon such terms and conditions as the Governor may think fit; and if any such term or condition is broken, such person may be retaken and dealt with as provided in section thirty of this Act.

30.

Escaped mentally ill persons detained under this Part may be recaptured.

cf. Act No. 45, 1898, s. 73.

30. In case of the escape of any person detained in a mental hospital pursuant to the provisions of this Part of this Act he may be retaken at any time by the superintendent, or any officer, servant or other person employed therein, or any member of the police force, or any other person authorised by the Minister or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised and shall be conveyed and admitted to and detained in such hospital.

Penalties for assisting or permitting escape.

cf. *Ibid.* s. 74.

31. Any person who rescues any person being conveyed to or detained in any mental hospital pursuant to the provisions of this Part of this Act, and the superintendent or any officer, servant, or other person employed in any such hospital who, through wilful neglect or connivance, permits any person so detained therein pursuant to the provisions of this Part of this Act to escape therefrom, or conceals or abets or connives at any such escape, shall be guilty of an offence against this Act and shall be liable upon conviction on indictment to imprisonment for a period not exceeding three years or upon summary conviction to imprisonment for a period not exceeding one year or to a penalty not exceeding five hundred pounds or both such imprisonment and penalty.

Persons attempting to commit suicide and mentally ill not triable for the offence.

cf. *Ibid.* s. 75.

32. Any person committed to take his trial for having attempted to commit suicide who is certified by two medical practitioners in or to the effect of the form of Schedule Three to be mentally ill shall forthwith be sent to and detained in a mental hospital and such person, when certified by the superintendent and Director, or by the superintendent and an official visitor, to be not mentally ill, shall be discharged from such hospital, and shall not be put upon his trial or be liable to any charge or indictment for having attempted such act of suicide.

Security conditions for persons detained in mental hospitals under this Part.

33. (1) Any person detained in a mental hospital pursuant to the provisions of this Part of this Act shall be subject to such security conditions as the Director may deem necessary.

(2)

(2) The Director may by order in writing direct the transfer of a person detained in a mental hospital pursuant to this Part of this Act to any other mental hospital. Any such order for transfer shall be a sufficient authority for the transfer of such person and for his being admitted to and detained in the mental hospital to which he is ordered to be transferred.

PART VIII.

WELFARE OFFICERS.

Appointment and duties of welfare officers.

34. (1) For the purposes of this Act the Governor may appoint such welfare officers as he deems necessary.

(2) The powers, authorities, duties and functions of a welfare officer shall be:—

(a) on the direction of a superintendent to escort and convey or assist in escorting and conveying a patient to a mental hospital, where such patient has been granted leave of absence from such mental hospital and such patient's return is desirable on account of a breakdown in his mental health;

(b) to escort and convey or assist in escorting and conveying patients from a mental hospital to another mental hospital or to a public hospital;

(c) to visit patients, who are on leave of absence from mental hospitals, or their relatives or friends for the purpose of advising them on matters pertaining to the welfare of such patients;

(d) to exercise and perform such other powers, authorities, duties and functions as may be conferred or imposed upon him by or under this Act or as may be assigned to him by the Director.

PART IX.

OFFICIAL VISITORS.

Appointment of official visitors.

35. (1) The Governor may appoint for every admission centre, mental hospital or authorised hospital, two or more official visitors, one of whom shall be a medical practitioner and one a stipendiary magistrate, barrister-at-law, or solicitor.

(2) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of an official visitor and such official visitor shall not in his capacity as such be subject to the provisions of any such Act.

(3) No person of or above the age of seventy years shall be appointed as an official visitor. An official visitor shall cease to hold office as such on the day upon which he attains the age of seventy years.

(4) Any two or more official visitors, one being a medical practitioner, shall visit the place for which they are appointed official visitors once at least every month with or without any previous notice, and at such hours of the day or night, and for such length of time as they think fit, and also at such other times as the Minister may direct.

(5) Any person who has any pecuniary interest, directly or indirectly, in an authorised hospital shall not be or act as an official visitor for any authorised hospital and no official visitor shall sign any certificate or request for the admission of any person to, or attend professionally upon, any patient in any admission centre, mental hospital or authorised hospital.

(6) Such official visitors, when visiting such admission centre, mental hospital or authorised hospital, shall, so far as practicable, inspect every part of the same and make such inquiries as they may deem necessary as to the care, treatment and control of the persons detained therein.

Duties of superintendents on visits by official visitors.

36. (1) The superintendent shall allow the official visitors visiting an admission centre, mental hospital or authorised hospital to have access to and inspect every part thereof and shall permit them to see and interview every person detained therein

therein, and shall give full and true answers to the best of his knowledge to all questions which the official visitors may ask in reference to the said admission centre, mental hospital or authorised hospital, and the persons detained therein, and shall produce to the official visitors such registers, books, records, orders, certificates, papers and other documents relating to the admission and discharge, care, treatment and control of persons detained therein, and furnish all such returns relating to any of the matters aforesaid, as may be required by such official visitors.

(2) The official visitors shall—

(a) examine and sign all registers, books and records produced to them in accordance with the foregoing provisions;

(b) on every visit to an admission centre, mental hospital or authorised hospital enter in the official visitors' book the fact of their visit with such observations as they think fit; and

(c) transmit to the Minister as soon as practicable after each such visit a report upon their visit containing such information as they deem necessary.

PART X.

PROTECTED AND INCAPABLE PERSONS AND COMMITTEES AND MANAGERS OF THEIR ESTATES.

37. The Court shall, except on appeal as hereinafter provided, be holden by the Chief Judge or a judge in Equity, or by any other judge sitting for the Chief Judge in Equity during his absence from Sydney or illness or at his request: **Constitution of Court.** Act No. 45, 1898, s. 101.

Provided that any such judge may sit in chambers to determine all such matters as in his opinion may advantageously and with propriety be heard in chambers; and such judge when so sitting shall have the same powers and jurisdiction as in open court.

38.

Declarations of Court as to persons being mentally ill.

cf. Act No. 45, 1898, s. 102.

38. Where it is proved to the satisfaction of the Court that a person is mentally ill and incapable of managing his affairs, the Court may make a declaration to that effect, and may direct a reference to the Master to make inquiries concerning the property of such person, and may make all proper orders for rendering the property of such person, or the income thereof available for the payment of his debts and for the maintenance or benefit of himself and his family, and for carrying on his trade or business (if any), and may, if necessary, appoint, either with or without security, a committee of his estate, and also when desirable appoint a committee of his person.

Persons incapable of managing their affairs.

cf. *Ibid.* s. 103.

39. (1) Where it is proved to the satisfaction of the Court that any person is, through mental infirmity, arising from disease or age, incapable of managing his affairs, the Court may make all proper orders for rendering the property and income of the said person available for the payment of his debts and for the maintenance and benefit of himself and his family; and may make orders for the care and management of his property in all respects as if he were a protected person; and may, if necessary, appoint a manager, either with or without security, to undertake the care and management of his property under the order and direction of the Court.

(2) The manager shall, subject to the said orders and directions and to the rules of Court, have the same powers and be subject to the same obligations and control as a committee, appointed under section thirty-eight of this Act, of the estate of a protected person, and the powers and provisions contained in this Act relating to the management and administration of the estates of protected persons shall apply to the estates of incapable persons.

Superseding orders, etc. when person has recovered.

cf. *Ibid.* s. 104.

40. Where it is proved to the satisfaction of the Court that any protected person or incapable person has recovered his mental health and is capable of managing his affairs, the Court may make a declaration to that effect, and may make all proper orders to give effect to such declaration, and to release the property of such person from the control of the Court

Court or the manager, as the case may be, and to discharge the committee of his estate and the committee (if any) of his person or the manager, as the case may be.

Mode of application. cf. Act No. 45, 1898, s. 105.

41. Applications under sections thirty-eight, thirty-nine and forty of this Act shall be made, and evidence by affidavit given in support thereof, in such manner as is prescribed by rules of Court:

Provided that every deponent may be cross-examined upon his affidavit either at the hearing or at such time and place as the Court may direct, and at such hearing the Court may receive or require the oral evidence of witnesses and such other proofs as may be deemed necessary.

Service of process. cf. *Ibid.* s. 106.

42. Notice of any applications under sections thirty-eight, thirty-nine and forty of this Act and of the evidence by affidavit to be given in support thereof shall be given to such persons, in such manner and within such time as may be prescribed by rules of Court.

Court may order inquiry before a jury. cf. *Ibid.* s. 107.

43. The Court in any case, instead of determining whether or not the person whose mental health is the subject of inquiry is mentally ill and incapable of managing his affairs, or is through mental infirmity, arising from disease or age, incapable of managing his affairs, may order that question to be determined by a jury; and thereupon the like proceedings for procuring the return of such jury shall be had and taken as provided by any law for the time being in force for the return of juries in the Supreme Court, and in every proceeding before a jury pursuant to this section the number of the jury shall be four, unless the Court order a jury of twelve.

Inquiries before jury. cf. *Ibid.* s. 108.

44. Where any such inquiry before a jury is ordered, the Court shall direct the question to be tried before a judge or the Master, or a commissioner specially appointed, who shall while so acting have for the purpose of the inquiry all the powers of the Supreme Court; and the trial of every such question and the verdict thereon shall be had and dealt with in all respects in accordance with any law for the time being in force relating to the trial of issues out of the Supreme Court.

After verdict Court may make declarations and orders.

cf. Act No. 45, 1898, s. 109.

45. When the verdict of the jury has been returned, unless a new trial is granted, the Court may make such declaration and orders as mentioned in sections thirty-eight and thirty-nine of this Act, as the case may require.

Examination of person whose mental health is in question.

cf. *Ibid.* s. 110.

46. On the hearing of any application under section thirty-eight or thirty-nine of this Act the person whose mental health is in question shall be examined by the Court; and on the trial of any such question as abovementioned there shall be a like examination by the jury before they consult as to their verdict, and every such examination shall take place in open court or in private, as may be deemed expedient:

Provided that, if it appears to the Court to be unnecessary or inexpedient that such person should be examined by the Court, or the jury, the Court may, in lieu of the examination aforesaid, direct the Master to personally examine the said person and report on such examination, or may dispense with any examination whatever.

Construction of references to commission of Lunacy and certain like expressions.

cf. *Ibid.* s. 111.

47. Where in any Act or rule of Court or instrument, reference is made to a commission of Lunacy, or a writ in the nature of a writ de lunatico inquirendo, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission, the application and declaration or orders thereon in sections thirty-eight and forty of this Act mentioned, as the case may require, shall be taken to be intended by or comprehended in such reference.

Persons found mentally ill in places outside N.S.W.

cf. *Ibid.* s. 112.

48. When the Court is satisfied that any person has been found mentally ill and incapable of managing either himself or his affairs or both by any commission de lunatico inquirendo, or other legal inquiry in any part of the British Commonwealth of Nations outside New South Wales or in any other country to which the Governor by proclamation published in the Gazette extends the provisions of this section, the Court may direct a copy of the inquisition or finding on such commission or inquiry, duly certified by the proper officer of the Court or other authority into which such inquisition or finding has been returned

returned, to be filed of record in the Court; and may thereupon appoint a committee of such person's estate or person, or both, and may give such other orders in respect of the management of his estate or person as it deems fit; and such committee shall have the same duties, powers, and liabilities as if he were the committee of the estate or person of a protected person.

Court may order costs.
cf. Act No. 45, 1898, s. 113.

49. The Court may make such order as to the costs, charges, and expenses of and incidental to any proceeding authorised by this Act as the Court thinks proper, and every such order shall have the same effect as orders for the payment of money made by the Supreme Court in its equitable jurisdiction.

Appeal.
cf. *Ibid.* s. 114.

50. There shall be an appeal to the Full Court of the Supreme Court from every order or decision made under this Act before or by a single judge in such manner as may be prescribed by rules of Court.

PART XI.

Management of Estates of Patients and Certain Other Persons.

Division 1.—*General Powers and Duties of Master.*

Master in Protective Jurisdiction of Supreme Court.
cf. *Ibid.* s. 115.

51. There shall be a Master in the Protective Jurisdiction of the Supreme Court, who shall be the person for the time being holding the office of Master in Equity.

The

The Governor may appoint a Deputy Master. The Deputy Master may exercise all the powers conferred and shall perform all the duties imposed upon the Master by any Act or by any rule or order of the Court. During the illness or absence of the Deputy Master, the Court or the Chief Judge or a judge in Equity may authorise the Chief Clerk in the Protective Jurisdiction of the Supreme Court to exercise all the powers conferred and perform all the duties imposed upon the Master.

Administration of estates of certain persons. cf. Act No. 45, 1898, s. 116.

52. (1) Subject to rules of Court, the jurisdiction and powers of the Court in respect of the administration and management of the estates of all protected persons and incapable persons may be exercised by the Master; and every order made by the Master under the authority hereby conferred on him shall take effect, unless rescinded or varied by the Court; and the Master shall have and execute all the powers and duties hereby or under the authority hereof vested in and imposed upon him; and subject to and in accordance with the regulations and the rules of Court and to any special order of the Court, the Master shall undertake the general care, protection, and management, or supervision of the management, of the estates of all patients, protected persons and incapable persons; and he shall supervise and enforce the performance of the obligations and duties of all committees under this Act, and shall take care of, collect and administer, under the provisions of this Act, the property and estates of all patients.

(2) The Master may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stockbroker or any other person, to transact any business or do any act required to be transacted or done in the administration and management of the estate of any patient, protected person or incapable person.

(3) The Master shall not be responsible for the default of any such agent if employed in good faith.

53.

Expenses incurred to be paid out of estate.

cf. Act No. 45, 1898, ss. 117, 118.

53. All expenses incurred by or on behalf of the Crown, in the care, protection, and management, or in the supervision of the management, under this Act, of the estate of any patient, protected person or incapable person, may be charged by the Master against and shall be paid out of and recoverable from such estate or may be paid by the Master out of any money of such patient, protected person or incapable person that comes to his hands, or may be recovered by him on summary application to the Court, whether or not such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Percentages.

cf. *Ibid.* s. 119.

54. There shall be paid to the Master a percentage at such rate not exceeding five pounds per centum per annum as may be fixed by rule of Court on the clear annual income of every patient, protected person and incapable person; and the said percentage shall be charged upon and payable out of the estate of such patient, protected person or incapable person whether or not, before payment, such patient has been discharged, such patient, protected person or incapable person has died or there has, under section forty of this Act, been made a declaration in respect of such protected person or incapable person.

Master to have all necessary powers of inquiry, taking evidence, etc.

cf. *Ibid.* s. 120.

55. (1) The Master may in the execution or performance of his powers, authorities, duties and functions, and also in the prosecution of all inquiries and matters which may be referred to him under this Act, summon persons before him and administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit, and take recognizances and require the production of books, papers, accounts, and documents; and every person so summoned shall be bound to attend as required by the summons and give evidence before the Master in like manner as persons summoned before him in his equity jurisdiction are bound to attend and to give evidence; and the Court may by any

order

order (general or particular) refer to the Master any inquiries under the provisions of this Act relating to the person and estate of any person.

(2) Every person who does not appear pursuant to such summons (having had his reasonable expenses paid or tendered to him at the time of service of such summons), or does not assign some reasonable excuse for not so appearing, or appears and refuses to be sworn or examined shall, for every such neglect or refusal, be liable to a penalty not exceeding ten pounds.

Witnesses may be cross-examined orally.
cf. Act No. 45, 1898, s. 121.

56. Every person giving evidence by affidavit shall be liable to oral cross-examination by or before the Master upon his affidavit, and after cross-examination may be re-examined orally by or on behalf of the person filing the affidavit; and every person giving evidence by affidavit shall be bound to attend before the Master to be so cross-examined and re-examined upon receiving due and proper notice and payment or tender of his reasonable expenses in like manner as if he had been duly served with a writ of subpoena ad testificandum before the Master; and the expenses attending on such cross-examination and re-examination shall be paid in such manner and by such person as the Master directs.

Master may issue advertisements.
cf. *Ibid.* s. 122.

57. The Master may cause to be issued such advertisements as may to him seem expedient with reference to the subject matter of a proposed inquiry or with a view to the efficient discharge of his duties as Master under this Act with regard to the estate and property of any person.

Master to approve of and to enforce security to be given by committee of estate.
cf. *Ibid.* s. 123.

58. The Master shall approve on behalf of Her Majesty of the security to be given by the committee of the estate of any person under order of the Court pursuant to this Act, and it shall be the duty of the Master to see that the conditions of all bonds and recognizances heretofore or hereafter to be given or entered into by the committee of the estate or other persons in the matter of the estate shall be faithfully and regularly observed and performed, and immediately

immediately to report to a judge any breach or non-performance of any of such conditions; and thereupon such judge may cause such bond or recognizance to be forfeited or estreated, and such forfeiture or estreat shall be enforced and effected in the manner provided by any law now or hereafter to be in force relating to the estreat of recognizances entered into to Her Majesty.

Division 2.—Powers and Duties of Master in Respect to Estates of Patients.

Powers of Master in respect of estates of patients. cf. Act No. 45, 1898, s. 124.

59. The Master shall have in respect of the property and estate of any patient, in addition to the general powers conferred upon him in Division 1 of this Part of this Act, all the like powers and authorities, subject to the like limitations, as are hereinafter, in Division 3 of this Part of this Act, given to the committee of the estate of a person, and also the powers hereinafter mentioned.

Power to apply property of certain acquitted persons for their benefit. cf. *Ibid.* s. 125.

60. Where any person has on the trial of any information been acquitted as referred to in subsection two of section twenty-three of this Act or has upon arraignment upon a criminal charge been found to be mentally ill, the Sheriff shall report the fact to the Master, who shall thereupon make inquiry respecting the property of such person, and the Court may, on being satisfied that such person is still a mentally ill person and is still in confinement, make any orders with respect to the property of such person 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.

Master's powers as to property of patients. cf. *Ibid.* s. 126.

61. The Master shall have the management and care of the property of every patient, and in addition to other powers and duties necessary and incident to such management and

care,

care, may exercise the following powers and perform the following duties with respect to the estate of every patient, that is to say, he may : —

(a) receive moneys, rents, incomes, and profits of real and personal property;

(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 one thousand 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, suits, and other proceedings on behalf of the patient;

(j) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts.

Master may apply to the Court as to the exercise of certain powers.
cf. Act No. 45, 1898, s. 127.

62. (1) The Master may apply to the Court in such manner as may be prescribed by rules of Court, for directions with respect to the exercise of any of the powers over the estate of a patient which the Court may exercise, or order a committee to exercise, over the estate of any person, under Division 3 of this Part of this Act.

(2) The Court 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.

Master may execute instruments on behalf of patient.
cf. *Ibid.* s. 128.

63. (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 not mentally ill, and may, in the name and on behalf of the patient, execute and sign deeds, instruments, transfers of shares, receipts, releases, and other documents, which shall be as effectual as if executed and signed by the patient himself while not mentally ill, 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 is a patient or not.

(2) 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 is 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.

Summary proceedings for protection of property of patients.
cf. *Ibid.* s. 129.

64. (1) If any real or personal property of a patient is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient by any person, the Master may as such Master claim and recover possession of such property or damages for the conversion or injury thereof,

thereof, or payment of the said sum by summary proceeding on complaint before a judge who is hereby authorised and required on proof to his satisfaction of the said cause of complaint to make an order requiring the defendant to give up possession of such property, or to pay reasonable damages to be fixed by the said order for the conversion or injury thereof, or to pay the sum so due as aforesaid, and in default of compliance by the defendant with the said order, to order in and by the same or any subsequent order that the defendant be committed to prison for any period not exceeding six months.

(2) Such judge may in any complaint under this section make such order as to costs as he thinks fit, and every order under this section shall have the same effect, and may be enforced in like manner as any judgment, decree, or order of the Supreme Court in its jurisdiction at law or in equity.

Payments to consolidated revenue.

cf. Act No. 45, 1898, s. 130.

65. (1) 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 may from time to time appoint, all money paid to him for the maintenance of any patient, and all percentages.

(2) 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.

(3) A separate current 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.

cf. *Ibid.* s. 131.

66. The Master may apply moneys standing to the credit of the current account of a patient in 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)

(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 not a mentally ill person;

(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 taking up of the rights to issues of new shares to which a patient becomes entitled by virtue of his existing shareholdings;

(g) the investment, in manner hereinafter provided, of money not presently required for the above purposes;

(h) the payment to a patient or any person in accordance with the provisions of section seventy-one or seventy-three of this Act:

Provided that the Master may report to and apply for the advice and directions of the Court upon any of the matters aforesaid; and the Court 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 to be made, and notices given as may be deemed advisable, and may make such orders in the premises as may be thought proper.

Investment on purchase of land. cf. Act No. 45, 1898, s. 133.

67. The Master may, with the leave of the Court, to be obtained in such manner as is or may from time to time be prescribed by rules of Court, invest any money unapplied as aforesaid in the purchase of land, if such purchase appear to the Court to be desirable for the purpose of protecting the estate of the patient from injury or deterioration in value, of increasing the value or facilitating the sale of other lands of the estate, or of providing a home for the patient or his dependants; and the Court may, on the hearing of the application, deal with the same ex parte, or require notice to be served on any person.

68.

Common fund.
cf. Act No. 19, 1913, s. 36A.

68. (1) Subject to this Act balances to the credit of all current accounts in the trust fund at the commencement of this Act and at any time thereafter shall be one common fund and shall be available for investment as provided in this Act.

(2) Interest received from investments from the common fund shall be credited to an account styled "Interest Account" and shall be allocated therefrom as provided in this section.

The costs and expenses of such allocation shall be a charge on the common fund.

(3) Interest shall be allowed on all balances forming part of the common fund, and shall be credited at such rate or rates and at such time or times as the Master may determine.

Investment of common fund and moneys unapplied under s. 66.
cf. *Ibid.* s. 36D.

69. Moneys unapplied as aforesaid and moneys in the common fund may be invested—

(a) in any of the securities authorised by the Trustee Act, 1925, as amended by subsequent Acts; or

(b) on deposit with the Colonial Treasurer for a period or periods not exceeding twelve months in any one case, which deposit shall bear interest at the prescribed rate and any such deposit may be renewed from time to time for a like period and subject to the like conditions.

Withdrawal from the common fund.
cf. *Ibid.* s. 36E.

70. (1) The Master may sell investments belonging to the common fund and may withdraw any part of the moneys belonging to the common fund and standing to the credit of the current account of any patient for any purpose of or relating to the exercise and discharge by the Master of his powers, authorities, duties and functions in the care, protection and management of the estate of such patient.

(2) Amounts withdrawn from the common fund pursuant to this section shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the common fund.

71.

Payment over of estate before discharge in certain cases.

cf. Act No. 45, 1898, s. 134.

71. (1) If any patient is permitted to be absent from an admission centre, mental hospital or authorised hospital under the provisions of this Act, the Master may, in his discretion, pay over to the patient, or to any person on his behalf who gives 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 his current account 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.

(2) 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.

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

cf. *Ibid.* s. 135.

72. 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 may, on application being made by the Master in such manner as is or may from time to time be prescribed by rules of Court, and on notice being given to such persons as the Court 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 a mentally ill person at the time when he made or executed the transfer, sale, alienation, charge, or lease.

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

cf. *Ibid.* s. 136.

73. (1) 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 his current account 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, documents and chattels forming part of his estate.

(2) 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.

(3) The Master, in his discretion, may continue to have the care, protection and management of the estate of a discharged patient until the discharged patient obtains an order of the Court or the Master is satisfied that the discharged patient is capable of managing his own affairs.

(4) The Master, in his discretion, may after the death of a 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, documents 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 that probate of the will or letters of administration have not been obtained, and notwithstanding that legal proof is not given of the right or title of the person claiming as aforesaid.

Unclaimed personal effects and moneys of patient.
cf. Act No. 45, 1898, s. 137.

74. (1) All personal effects in the hands of the Master belonging to a patient, and not claimed within two years from the date of the death or 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.

(2) All moneys standing to the credit of a patient in his current account in the trust fund at the end of six years from the date of the death or discharge of that patient shall be carried to and form part of the consolidated revenue.

(3) Nothing herein contained shall affect the right of a person under disability by reason of his being an infant, a mentally ill person or absent 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.
cf. *Ibid.* s. 138.

75. (1) 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.

(2)

(2) On the discharge or death of a patient, he or his legal personal representative (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 not a mentally ill person.

Relatives, etc., may agree for maintenance of patient. cf. Act No. 45, 1898, s. 139.

76. The Master may agree with any relative, guardian, or friend of any patient detained in an admission centre, mental hospital or authorised hospital for his maintenance while detained therein, and such relative, guardian, or friend shall be entitled to be reimbursed all necessary sums expended in such maintenance and interest thereon out of any real or personal property of such patient.

Owner, etc., of ship or aircraft liable for maintenance of certain mentally ill persons. cf. *Ibid.* s. 140.

77. (1) If within sixty days after the arrival of any ship or aircraft in New South Wales the Master has reasonable cause to believe that a passenger or member of the crew arriving by that ship or aircraft is a mentally ill person and has become, or is likely to become, a charge upon the public as a patient in an admission centre or mental hospital, it shall be lawful for the Master thereupon to require the owner, charterer, agent, or master of that ship or aircraft to execute, with two sufficient sureties, jointly and severally, a bond to Her Majesty in such sum as the Master may determine, not exceeding three thousand pounds, conditioned to pay to the Master the maintenance of that passenger or member of the crew in such admission centre or mental 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 of the ship or aircraft, subject to the approval of the Master, to return such passenger or member of the crew to the place whence he was transported.

(2) 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.

(3)

(3) No bond shall be required when the passenger or member of the crew is, at the date of the arrival of the ship or aircraft, domiciled in New South Wales; but the onus of proving such domicile as aforesaid shall be upon the said owner, charterer, agent, or master of the ship or aircraft.

Neglect or refusal to execute bond.

cf. Act No. 45, 1898, s. 141.

78. If the said owner, charterer, agent, or master of the ship or aircraft 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 three thousand pounds, to be recovered summarily before a stipendiary magistrate.

Cost of maintenance of patient may be recovered.

79. The cost to the Crown of the maintenance of a patient shall constitute a debt due to the Crown and shall be recoverable accordingly from the patient or his estate:

Provided that if the Master considers that undue hardship would be occasioned by the enforcement of such debt or other circumstances so warrant he may in his discretion either forego the debt altogether or accept a smaller sum in satisfaction thereof.

Court may direct Master to report as to mental health of any patient.

cf. *Ibid.* s. 148.

80. The Court may direct the Master to personally examine any patient, and take evidence and call for information as to the mental health of such patient, and report thereon to the Court, and the Court may make orders for and with respect to—

(a) the appointment of a guardian or otherwise for the protection, care, and management of the person or of the estate, or of the person and estate, of any patient who by any such report is found to be a mentally ill person; such guardian, according to the nature of his appointment, to have the same powers and authorities, and be subject to the same control and liabilities, as a committee of the person and estate of a protected person appointed under this Act;

(b) the appointment of a receiver or otherwise for the protection, care and management of the estate of such patient; such receiver to have the same powers

and

and authorities and be subject to the same control and liabilities as a receiver of the estate of a protected person appointed under this Act;

(c) the application of the income of such patient or a sufficient part thereof for his maintenance and support, and in payment of the costs, charges, and expenses attending the protection, care, and management of the person and estate of such patient, and of or in connection with the said examination by the Master and the obtaining of such orders by the Court;

(d) the investment or other application for the purpose of accumulation or otherwise of the surplus (if any) of such income as lastmentioned for the use of such patient, his wife, or children as to the Court may seem fit.

Division 3.—Management of Estates of Certain Persons not being Patients.

Power to raise money for certain purposes.

cf. Act No. 45, 1898, s. 149.

81. (1) The Court may order that any property of a protected person be sold, charged, mortgaged, dealt with, or disposed of as the Court thinks most expedient for the purpose of raising or securing or repaying with or without interest money which is to be or which has been applied to all or any of the purposes following:—

(a) payment of such protected person's debts or engagements;

(b) discharge of any incumbrance on his property;

(c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit;

(d) payment of or provision for the expenses of his future maintenance;

(e) payment of the costs of any proceeding under this Act, or of any sale or other disposition made under this Act.

(2)

(2) In case of a charge or mortgage being made under this Act for the expenses of future maintenance the Court may direct the same to be payable, either contingently, if the interest charged is a contingent or future one, or upon the happening of the event if the interest is depending on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as the Court thinks expedient.

Powers exercisable by committee under order of Court.
cf. Act No. 45, 1898, s. 150.

82. The Court may by order authorise and direct the committee of the estate of a protected person to do all or any of the following things: —

(a) sell any property belonging to such protected person;

(b) make exchange or partition of any property belonging to such protected person, or in which he is interested, and give or receive any money for equality of exchange or partition;

(c) carry on any trade or business of such protected person;

(d) grant leases of any property of such protected person for building, agricultural or other purposes;

(e) surrender any lease and accept a new lease;

(f) accept a surrender of any lease and grant a new lease;

(g) execute any power of leasing vested in such protected person having a limited estate only on the property over which the power extends;

(h) perform any contract relating to the property of such protected person entered into by him before he became a protected person;

(i) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to such protected person;

(j) exercise any power or give any consent required for the exercise of any power where the power is vested in such protected person for his own benefit, or the power of consent is in the nature of a beneficial interest in such protected person;

(k) sequestrate the estate of such protected person under the provisions of the bankruptcy laws;

(l) bring lands under the provisions of the Real Property Act, 1900, as amended by subsequent Acts;

(m) bring and defend actions, suits, and other proceedings on behalf of such protected person.

Property exchanged and renewed lease to be to same uses as before. cf. Act No. 45, 1898, s. 151.

83. Any property taken in exchange and any renewed lease accepted pursuant to this Act on behalf of a protected person under the powers of this Act, shall be to the same uses and be subject to the same trusts, charges, incumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to.

Extent of leasing power. cf. *Ibid.* s. 152.

84. (1) The power to authorise leases of a protected person's property under this Act shall extend to property of which the protected person is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the protected person, and all persons entitled in remainder and reversion expectant upon the estate tail of the protected person including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the protected person shall have the same rights and remedies against the lessee, his executors, administrators, and assigns, as the protected person or his committee would have had.

(2) Leases authorised to be granted and accepted by or on behalf of a protected person under this Act may be for such number of lives or such term of years at such rent and subject to such reservations, covenants, and conditions as the Court may order.

(3) Fines or other payments on the renewal of leases may be paid out of the estate of the protected person, or charged with interest on the leasehold property, as the Court may order.

Interest in property of certain persons not to be altered.

cf. Act No. 45, 1898, s. 153.

85. (1) Any patient, protected person or incapable person, his heirs, next of kin, devisees, legatees, executors, administrators, and assigns shall have the same interest in any moneys or other property arising from any sale, mortgage, charge, disposition of any property or other dealing therewith under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, charge, disposition or dealing, if no sale, mortgage, charge, disposition or dealing had been made, and the surplus moneys or other property shall be of the same nature as the property sold, mortgaged, charged, disposed of or dealt with.

(2) Moneys received for equality of partition and exchange, and all fines, premiums, and sums of money received upon the grant or renewal of a lease where the property, the subject of the partition, exchange, or lease was real estate of the patient, protected person or incapable person shall, subject to the application thereof for any purposes authorised by this Act, be considered as real estate, except in the case of fines, premiums and sums of money received upon the grant or renewal of leases of which the patient, protected person or incapable person was tenant for life, in which case the fines, premiums, and sums of money shall be personal estate of the patient, protected person or incapable person.

(3) In order to give effect to the foregoing provisions of this Act the Court may make such orders and direct such conveyances, deeds, and things to be executed and done as it thinks fit.

Expenses of improvements may be charged on estate. cf. Act No. 45, 1898, s. 154.

86. (1) The Court may order that the whole or any part of any moneys expended or to be expended under its order for the permanent improvement, security, or advantage of the property of a protected person or of any part thereof, shall with interest be a charge upon the improved property or any other property of the protected person, but so that no right of sale or foreclosure during the lifetime of the protected person shall be conferred by the charge, and the interest shall be kept down during his lifetime out of the income of his general estate as far as the same is sufficient to bear it.

(2) The charge may be made either to some person advancing the money, or, if the money is paid out of the protected person's general estate to some person as a trustee for him as part of his personal estate.

Court may order certain estates to be applied for maintenance. cf. *Ibid.* s. 155.

87. Where the net amount or net estimated value of the property of any protected person does not exceed the sum of five hundred pounds, the Court may order the amount of the property or the produce thereof when realised to be paid or transferred to some fit person, to be applied in or towards the maintenance of the protected person, either at the discretion of such fit person, or in such manner, and subject to such control as the Court may direct, and for the purpose of giving effect to any such order the Court may order any real estate or other property whatsoever of the protected person to be sold, and a valid conveyance or transfer thereof to be executed or made by such fit person as it shall direct.

Application of income for temporary maintenance. cf. *Ibid.* s. 156.

88. (1) Where it appears to the Court that there is reason to believe that the mental illness of any protected person is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of such protected person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income, or of ready money belonging to the protected person, and standing to his account with a banker

banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as it may think proper for the temporary maintenance of the protected person and the members of his immediate family who are dependent upon him for maintenance, and may order the payment of any such sum of money as aforesaid, or any part thereof, to some fit person, and may direct the same to be paid to such fit person accordingly, and when received to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid.

(2) The receipt in writing of the person named in the order to whom payment is to be made for any moneys payable to him by virtue thereof shall effectually discharge the banker, agent, or other person paying the same from the moneys therein respectively expressed to be received.

(3) The person so receiving any moneys by virtue of this section shall pass an account thereof before the Master when required.

Court may dissolve partnership.

cf. Act No. 45, 1898, s. 157.

89. Where a person, being a member of a partnership, becomes a protected person the Court may, by order, dissolve the partnership

Power to carry orders into effect.

cf. *Ibid.* s. 158.

90. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of a protected person, execute, make, and do all such conveyances, deeds, transfers, and things for giving effect to any order under this Act as the Court directs; and every such conveyance, deed, transfer, and thing shall be valid and effectual, and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject.

91.

Committee may act as trustee or guardian in certain cases.

cf. Act No. 45, 1898, s. 159.

91. Where a power is vested in a protected person in the character of a trustee or guardian, or the consent of a protected person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, as the case may be, the committee of the estate, in the name and on behalf of the protected person, under an order of the Court made upon the application of any person interested in the exercise of the power, may exercise the power or give the consent, as the case may be, in such manner as the order may direct.

Appointment of new trustees by committee.

cf. *Ibid.* s. 160.

92. Where under this Act the committee of the estate, under order of the Court, exercises in the name and on behalf of a protected person a power of appointing new trustees vested in him the persons who shall after and in consequence of the exercise of the power be the trustees shall have all the same rights and powers as they would have had if the order had also been made by the Supreme Court under any law for the time being in force relating to trusts; and the Court may in such case where it seems to be expedient make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of any such law as aforesaid on the appointment thereunder of new trustees.

Temporary provision for maintenance.

cf. *Ibid.* s. 161.

93. In any case where, pending the appointment of a committee, it appears to the Master desirable that temporary provision should be made for the expenses of the maintenance or other necessary purposes or requirements of the protected person or any member of his family out of any cash or available securities belonging to him in the hands of his bankers, or of any other person, the Master may, by certificate, authorise such banker or other person to pay to the person to be named in such certificate such sum as he certifies to be proper; and may, by such certificate, give any directions as to the proper application thereof for the protected person's benefit by that person, who shall be accountable for the same, as the Master directs.

94.

Transfer of stock belonging to certain persons.

cf. Act No. 45, 1898, s. 162.

94. Where any stock is standing in the name of or is vested in a protected person beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a protected person in trust for the protected person or as part of his property, and the committee dies intestate or himself becomes a mentally ill person or is out of the jurisdiction, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock and to receive and pay over the dividends thereof to a new committee or as he directs for the space of fourteen days after a request in writing for that purpose made by a new committee, then the Court may order some fit person to transfer the stock to or into the name of a new committee or otherwise, and also to receive and pay over the dividends thereof, or such sums of money, and in such manner as the Court directs.

Stock in name of mentally ill persons residing out of State may be ordered to be transferred.

cf. *Ibid.* s. 163.

95. Where any stock is standing in the name of, or vested in, a person residing out of New South Wales, the Court, upon proof to its satisfaction that a declaration to the effect that such person is a mentally ill person, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where he is residing, may order some fit person to make such transfer of the stock to or into the name of the curator or other person appointed as aforesaid or otherwise, and also to receive and pay over the dividends thereof as the Court thinks fit.

Who shall be appointed to make transfer.

cf. *Ibid.* s. 164.

96. Where an order is made under this Act for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the company, society or association in whose books the transfer is to be made.

Costs and remuneration may be paid out of estate.

cf. *Ibid.* s. 165.

97. The Court may order the costs and expenses of and relating to the petitions, applications, orders, directions, conveyances, and transfers to be presented or made in pursuance of this Part of this Act to be paid and raised out of or from the property, or the rents, income, or profits in respect of which the same respectively shall be presented or made in such manner as it may think proper; and the Court may order such sum by way of remuneration to be paid out of the estate to the committee of any protected person as the Court may think fit.

98.

98. Every conveyance, lease, surrender, transfer, charge, or other disposition made or accepted or executed and every payment made under this Act shall be valid to all intents and binding upon all persons whomsoever; and this Act shall be a full indemnity and discharge to all persons for all acts and things done or permitted to be done in pursuance thereof, or of any order of the Court made or purporting to be made under this Act.

All deeds, transfers, payments, etc., made in pursuance of this Act to be valid and binding.

cf. Act No. 45, 1898, s. 166.

99. Nothing in this Act contained shall subject any part of the property of a protected person to the debts or demands of his creditors, further or otherwise than as the same was immediately before the commencement of this Act subject thereto by due course of law.

Act not to subject property of protected persons to debts.

cf. *Ibid.* s. 167.

PART XII.

SPECIAL PROVISIONS RELATING TO THE PROPERTY OF MENTALLY ILL PATIENTS RESIDING OUTSIDE NEW SOUTH WALES.

100. (1) In this Part of this Act—

Interpretation and application of Part.

cf. *Ibid.* s. 167A.

"Reciprocating state" means any part of Her Majesty's dominions outside New South Wales which has been declared under subsection two of this section to be a reciprocating state for the purposes of this Part of this Act.

(2) Where the Governor is satisfied that the laws in force in any part of Her Majesty's dominions outside New South Wales are such as to enable powers to be exercised in that part in cases of patients residing in New South Wales substantially similar to the powers conferred by this Part of this Act in cases of mentally ill patients residing in that part, the

the Governor may by proclamation published in the Gazette declare that part to be a reciprocating state for the purposes of this Part of this Act, and thereupon that part shall become a reciprocating state within the meaning of this Part of this Act.

(3) The Governor may, by proclamation published in the Gazette, revoke or vary any proclamation under this section.

(4) References in the foregoing provisions of this section to Her Majesty's dominions outside New South Wales shall be construed as including references to any territory which is under Her Majesty's protection and to any territory the subject of a trusteeship agreement approved by the General Assembly of the United Nations which is under the administration of a government of any part of Her Majesty's dominions.

Powers of Master as to property in New South Wales of mentally ill patients in reciprocating state.

cf. Act No. 45, 1898, s. 167B.

101. (1) If the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property and estates of mentally ill patients in any hospital or other institution situated in that state and authorised for the reception and care of mentally ill persons—

(a) certifies in writing under his hand and seal to the Master that any person is a mentally ill patient residing in that state and is confined in any such hospital or other institution and that he is possessed of or entitled to or appears to be entitled to or interested in real or personal property in New South Wales; and

(b) by instrument in writing under his hand and seal authorises the Master to collect, recover, manage, sell or otherwise dispose of and administer such property or to make inquiry respecting such property,

the Master shall have and may exercise over and in respect of such property the same powers of collection, recovery, management, sale, disposition, administration, and inquiry as he

he would have had and may have exercised over such property if such mentally ill patient had been resident in New South Wales and a patient within the meaning of this Act; and the provisions of this Act apply in respect of such property accordingly.

(2) Where the Master has, pursuant to any such authority as is referred to in paragraph (b) of subsection one of this section and in the exercise of the powers conferred upon him by that subsection, received any moneys or properties, the Master may, after—

(a) payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and

(b) satisfying or providing for the following debts and claims of which he has notice, namely, debts of the mentally ill patient named in such authority owing to persons resident in New South Wales and the claims of persons so resident against that patient,

pay over or deliver the balance of such moneys or properties to the officer of the reciprocating state who signed such authority or his successor in office, without seeing to the application thereof, and without incurring any liability in respect of such payment over or delivery, and shall duly account to that officer or his successor for that balance.

PART XIII.

COURT VISITORS.

102. The Court may by general rule or special order:— Court may order protected or incapable persons to be visited.

(a) direct the Director or other fit person to visit any protected person or incapable person and to make a report in writing to the Court or a judge of the state

cf. Act No. 45, 1898, s. 168.

state of mind and bodily health and general condition, and also of the care and treatment of the person visited;

(b) 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 assets of the person visited, and as to the orders of the Court made in respect thereof;

(c) order that any fees and expenses connected with the visit be paid out of the estate of the person visited.

PART XIV.

MISCELLANEOUS PROVISIONS.

Offences in relation to certificates by medical practitioners.

103. A medical practitioner who signs any certificate in or to the effect of the form set out in Part I of Schedule Two or in Schedule Three without having personally examined the person to whom it relates, at the time specified in such certificate, for the purpose of ascertaining the condition of such person or who wilfully makes any false statement in any such certificate shall be guilty of an offence against this Act.

Medical certificates, requests, etc., may be amended.

104. (1) Any medical certificate, request, recommendation, direction, order, or other document, by virtue of which any person has been admitted to an admission centre, mental hospital or authorised hospital, and which is incorrect or defective in any particular, may, with the approval of the Director, and within twenty-eight days after the admission of such person, be amended by the person who has signed the same; and such medical certificate, request, recommendation, direction, order, or other document as so amended shall thereupon be deemed to have and always to have had effect from its original date.

(2)

(2) If such medical certificate, request, recommendation, direction, order, or other document is not so amended, the Director may order the discharge of the person so admitted as aforesaid; or direct the superintendent of such admission centre, mental hospital or authorised hospital to obtain a new medical certificate, request, recommendation, direction, order or other document which shall have and be deemed always to have had effect for all purposes as if it had been obtained, made, and signed on the date on which the medical certificate, request, recommendation, direction, order or other document upon which such person was admitted to such admission centre, mental hospital or authorised hospital was obtained, made and signed.

Patients absent without leave.

105. Where a patient absents himself from any admission centre, mental hospital or authorised hospital otherwise than in accordance with the provisions of this Act the superintendent or any officer, servant or other person employed in such admission centre, mental hospital or authorised hospital, member of the police force or any other person authorised by the Director or such superintendent, or any person assisting such superintendent, officer, servant, other person so employed, member of the police force or person so authorised may escort such patient and return him to such admission centre, mental hospital or authorised hospital.

Penalty on superintendents, officers, etc., ill-treating patients.

106. Any superintendent, officer, servant or other person employed in an admission centre, mental hospital or authorised hospital who strikes, wounds, ill-treats, or wilfully neglects any patient or voluntary patient shall for every such offence, be liable to a penalty not exceeding one hundred pounds, or to imprisonment for any period not exceeding six months, or to both such penalty and imprisonment:

Provided that nothing in this section contained shall prejudice or affect any civil responsibility of the offender arising out of such offence.

107.

Powers of superintendents and official visitors exercisable in respect of places to which they are appointed.

107. The powers, authorities, duties and functions conferred or imposed upon a superintendent of or an official visitor to an admission centre, mental hospital or authorised hospital by or under this Act shall be exercised and performed by him only in respect of that admission centre, mental hospital or authorised hospital and the patients and voluntary patients therein.

Conditions applicable to performance or giving of certain operations or medical treatment upon or to patients.

cf. Act No 45, 1898, s. 179A.

108. (1) (a) This section shall apply to leucotomy and such other operations or medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2) No patient shall be subjected to any operation or medical or therapeutic treatment to which this section applies—

(a) by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless the Director has consented to the performance of such operation or the application of such treatment; or

(b) by any other medical practitioner or practitioners unless the Director has consented to the performance of such operation or the application of such treatment by such practitioner or practitioners.

(3)

(3) The Director shall not give such consent unless—

(a) he is satisfied upon the report of a superintendent that such operation or treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated, or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient; and

(b) in the case of leucotomy and any other operation or medical or therapeutic treatment in respect of which a Consultative Committee has been constituted as hereinafter provided the appropriate Consultative Committee has recommended the subjection of the patient to such operation or medical or therapeutic treatment.

(4) No patient shall be subjected to any operation or medical or therapeutic treatment referred to in paragraph (b) of subsection three of this section if the person, on whom notice has been served by the Director as hereinafter provided, has within the time prescribed expressed his disapproval of such operation or medical or therapeutic treatment.

Such notice shall state the name of the patient proposed to be subjected to any such operation or medical or therapeutic treatment, the nature of such operation or treatment, and the time within which disapproval may be expressed.

Such notice shall—

(a) where the patient is married and not separated by order of a court or by agreement from his spouse, be served on the spouse;

(b) where the patient is not married or is separated by order of a court or by agreement, be served on the parents or the surviving parent of such patient;

(c) where there is no person on whom notice is required to be served under the foregoing provisions of paragraphs (a) and (b) of this subsection, or the Director is unable to ascertain particulars of the

name

name and whereabouts of any person on whom notice is required to be so served, be served on such person as the Director considers to be the person in whose care, guardianship or custody the patient was prior to his admission to the admission centre, mental hospital or authorised hospital.

Where the Director has reason to believe that any disapproval expressed by any person in accordance with the foregoing provisions of this subsection has been unjustifiably or unreasonably expressed he may refer the matter to the Master for inquiry and determination. Any person who appears to the Master to be interested in the matter may be heard in person or by counsel at any such inquiry.

If the Master is of opinion that such disapproval has been expressed unjustifiably or unreasonably he may order that the patient be subjected to any such operation or medical or therapeutic treatment.

There shall be an appeal to the Full Court of the Supreme Court from any such order in such manner as may be prescribed by rules of Court.

(5) (a) There shall be constituted a Consultative Committee for the purposes of making recommendations to the Director relating to the subjection of patients to the operation of leucotomy.

(b) The Minister may in respect of any other operation or medical or therapeutic treatment to which the provisions of this section apply constitute a Consultative Committee for the purpose of making recommendations to the Director relating to the subjection of patients to such operation or medical or therapeutic treatment.

(c) Any Consultative Committee constituted pursuant to the provisions of this subsection shall consist of such medical practitioners and other persons as the Minister appoints.

(6) Where in the opinion of a superintendent the delay incurred in obtaining the consent of the Director to the performance or application of any operation or medical or therapeutic treatment to which this section applies would endanger the life of any patient such superintendent may—

(a) himself perform such operation or apply such treatment; or

(b) by writing under his hand consent to the performance of such operation upon or the application of such treatment to such patient by any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or by any other medical practitioner or practitioners named in such consent.

Where a superintendent performs any operation or applies any treatment or consents to such performance or application in accordance with the provisions of this subsection he shall forthwith report in writing to the Director the circumstances of the case.

(7) Any consent given by the Director or of a superintendent under this section shall, for the protection of any medical practitioner performing any operation or applying any treatment in accordance with such consent and of any person concerned with the performance of such operation or with the application of such treatment, have the same effect as if such consent had been given by the person operated upon or treated while he was not a mentally ill person or in the case of a minor, as if such consent had been given by his parents.

109. (1) (a) This section shall apply to electro convulsive therapy, electro narcosis therapy and insulin shock and such operations and medical or therapeutic treatments as the Governor pursuant to paragraph (b) of this subsection declares to be operations or medical or therapeutic treatments in respect of which the provisions of this section shall apply.

Certain operations or treatments may be performed or applied without consent of patients.

(b)

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(2) A patient may be subjected to any operation or medical or therapeutic treatment to which this section applies by the superintendent or any member or members of the medical staff of an admission centre, mental hospital or authorised hospital or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or any other medical practitioner or practitioners notwithstanding that the patient or any other person legally entitled to consent to the operation or medical or therapeutic treatment of the patient has not consented thereto.

(3) No operation or medical or therapeutic treatment to which this section applies shall be performed on or applied to a patient unless the superintendent has determined that such operation or medical or therapeutic treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient.

Any such determination shall be expressed in writing.

Ancillary provisions to ss. 108 and 109.

110. (1) (a) Any proclamation under section one hundred and eight or one hundred and nine of this Act or subsection two of this section shall—

(i) be published in the Gazette;

(ii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;

(iii)

(iii) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) The day so appointed shall not be earlier than the day next following—

(i) the fifteenth sitting day after such proclamation has been laid before both Houses of Parliament if notice of motion for the disallowance of such proclamation is not given in either House of Parliament within fifteen sitting days after such proclamation has been laid before such House; or

(ii) the day upon which a notice of motion for the disallowance of such proclamation duly given in either House of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days.

(c) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation such proclamation shall not take effect.

(2) Any proclamation under section one hundred and eight or one hundred and nine of this Act may be revoked by the Governor by proclamation.

(3) No action claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against Her Majesty, the Director or a superintendent or any member of a medical staff or medical practitioner referred to in sections one hundred and eight and one hundred and nine of this Act for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the enactment of those sections or the giving of any consent by the Director or a superintendent or as a result of any operation or treatment performed or applied in accordance with the provisions of those sections.

(4) In sections one hundred and eight and one hundred and nine of this Act "superintendent" in relation to an authorised hospital the holder of the license for which is not a medical practitioner means any medical practitioner visiting such authorised hospital pursuant to the provisions of section eleven of this Act.

Penalties

111. (1) Any person guilty of an offence against this Act shall, except where otherwise expressly provided, be liable to a penalty not exceeding one hundred pounds.

(2) Any such penalty may be recovered in a summary manner before a stipendiary magistrate or any two justices in petty sessions.

Regulations.

112. (1) The Governor may make regulations, not inconsistent with this Act, for and with respect to : —

(a) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act;

(b) prescribing the keeping and form of such books, records, registers or other documents or the furnishing of such reports or statistics as may be necessary or convenient for the administration of this Act;

(c) prescribing the duties, responsibilities, obligations and liabilities of superintendents and medical officers;

(d) all matters relating to correspondence by and with patients including the authorisation of the perusal and withholding of such correspondence;

(e) the general administration of admission centres and mental hospitals;

(f) all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULES.

SCHEDULE ONE.

No. of Act.	Name of Act.	Extent of Repeal.
1898, No. 45	Lunacy Act of 1898	The whole.
1924, No. 10	Crimes (Amendment) Act, 1924	Section twenty-nine.
1934, No. 39	Lunacy (Amendment) Act, 1934	The whole.
1937, No. 37	Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937.	Section four.
1944, No. 19	Public Service (Amendment) Act, 1944.	Section three.
1944, No. 38	Lunacy (Amendment) Act, 1944	The whole.
1945, No. 33	Lunacy (Amendment) Act, 1945	The whole.
1946, No. 38	Lunacy (Amendment) Act, 1946	The whole.
1947, No. 41	Jury (Amendment) Act, 1947 ...	Subsection three of section eight.
1949, No. 43	Mental Institution Benefits Agreement Act, 1949.	Section three.
1952, No. 31	Lunacy (Amendment) Act, 1952 ...	The whole.
1955, No. 3	Lunacy (Amendment) Act, 1955 ...	The whole.

SCHEDULE TWO.

MENTAL HEALTH ACT, 1958.

MEDICAL CERTIFICATE.

Part I.

I, ..., of
(*name in full*)
..... (Medical Practitioner)
(*address*)
do hereby certify that on the ..... day of .....
19 , at .....
(*state place where examination took place*)
I personally examined .....
(*name of person in full*)
and I am of the opinion that the said person is a mentally ill person and is a suitable case for admission to the Admission Centre at ..... for observation and treatment.
(*name of Institution*)

* Strike out and initial any of the conditions that are not applicable.

* In my opinion the said person is:—
(a) suicidal
(b) dangerous to others
(c) unable to care for himself
(d) not under proper care and control.

The following treatment and medication (*if any*) has been administered in respect of the mental illness of the said ....., viz.

So far as I am aware—
(a) the bodily health and condition of the said .... is ..... and

* Strike out words inapplicable.

(b) the said ..... * has / has not suffered any recent injury.

If the said ..... has suffered recent injury the particulars of such injury are as follows:—

Made and signed this ..... day of ....., 19 .

Signature .....

Part II.

If the assistance of a member of the Police Force is required this Part of the Schedule should be completed.

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the said ..... to the Admission Centre at .....

Made and signed this ..... day of ..... 19 .

Signature .....

SCHEDULE

SCHEDULE THREE.

MENTAL HEALTH ACT, 1958.

I, the undersigned, being a medical practitioner, hereby certify that I, on the ..... day of ....., 19 , at *..... ..... separately from any other medical practitioner, personally examined .... of †....., whose occupation is ..... and that the said ..... is mentally ill and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:—

(1) Facts indicating mental illness observed by myself.

(2) Other facts (if any) indicating mental illness communicated to me by ‡

Dated at ..... this ..... day of ....., 19 .

Signature .....

Place of abode .....

* Insert name and address of place of examination.

† Insert residence.

‡ State full names and addresses of every communicant.

SCHEDULE FOUR.

MENTAL HEALTH ACT, 1958.

WHEREAS it has been duly certified under section ..... of the Mental Health Act, 1958, that ..... a prisoner in the ..... is mentally ill, I, the Minister for Health, exercising the powers conferred upon me under the said Act, hereby order that the said ..... be removed to the Mental Hospital at ..... to remain there until he is certified to be not mentally ill and dealt with in accordance with the said section.

Given under my hand the ..... day of ....., 19 .

.....

Minister for Health.

In the name and on behalf of Her Majesty I assent to this Act.

E. W. WOODWARD,
Governor.

Government House,
Sydney, 31st December, 1958.