

New Zealand.



AMENDED: See Act 1912 No. 21

AMENDED: See Act 1914 No. 66

AMENDED: See Act 1918 No. 24 Sec 38

AMENDED: See Act 1921 No. 28

AMENDED: See Act 1922 No.

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Amended by 1928 No. 32

FOR REGULATIONS see **NEW**
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1911, No. 6.

AN ACT to consolidate and amend the Law relating to the Care and Title.
Control of Mentally Defective Persons. [21st October, 1911.]

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

1. This Act may be cited as the Mental Defectives Act, 1911, and shall come into operation on the first day of March, nineteen hundred and twelve. Short Title and commencement.

2. In this Act, except where a different intention appears from the context or subject-matter,— Interpretation.

“Boarder” means a person received into an institution under the provisions of Part V of this Act:

“Court” means the Supreme Court, or any Judge thereof:

“Inspector” means the Inspector-General, Deputy Inspector-General, or any Assistant Inspector or District Inspector appointed under this Act:

“Inspector-General” means the Inspector-General of Mental Defectives appointed under this Act:

“Institution” means a mental hospital or other place provided for the reception and detention of two or more mentally defective persons, and declared to be a public institution under this Act, or in respect of which a license is granted under this Act:

“Licensed institution” means an institution in respect of which a license is granted under this Act for the reception and detention of mentally defective persons:

“Medical certificate” means a certificate signed by a medical practitioner in pursuance of this Act:

“Medical practitioner” means a person registered in New Zealand as a medical practitioner under any Act providing for the registration of medical practitioners:

“Mentally defective person” means a person who, owing to his mental condition, requires oversight, care, or control for his own good or in the public interest, and who according to the nature of his mental defect and to the degree of oversight, care, or control deemed to be necessary is included in one of the following classes:—

Class I—“Persons of unsound mind”—that is, persons who, owing to disorder of the mind, are incapable of managing themselves or their affairs:

Class II—“Persons mentally infirm”—that is, persons who, through mental infirmity arising from age or the decay of their faculties, are incapable of managing themselves or their affairs:

Class III—“Idiots”—that is, persons so deficient in mind from birth or from an early age that they are unable to guard themselves against common physical dangers and therefore require the oversight, care, or control required to be exercised in the case of young children:

Class IV—“Imbeciles”—that is, persons who though capable of guarding themselves against common physical dangers are incapable, or if of school age will presumably when older be incapable, of earning their own living by reason of mental deficiency existing from birth or from an early age:

Class V—“Feeble-minded”—that is, persons who may be capable of earning a living under favourable circumstances, but are incapable from mental deficiency existing from birth or from an early age of competing on equal terms with their normal fellows, or of managing themselves and their affairs with ordinary prudence:

Class VI—“Epileptics”—that is, persons suffering from epilepsy: ~~Take in addition 1928 inset.~~

“Minister” means the Minister of the Crown having for the time being the administration of this Act:

“Patient” means a person lawfully detained under this Act, but does not include a boarder:

“Prescribed” means prescribed by this Act or by regulations made thereunder:

"Public institution" means any institution which has been declared under this Act to be an institution for mentally defective persons :

"Regulation" means a regulation made by the Governor in Council under the authority of this Act :

"Superintendent" means the Superintendent of an institution, and includes a Medical Superintendent.

Wicklow

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PART I.

PROCEDURE FOR RECEPTION OF PATIENTS.

3. Subject to the exceptions hereinafter expressed, no person shall be received or detained as a mentally defective person in any institution for mentally defective persons except under the authority of a reception-order made by a Magistrate in accordance with this Act.

Authority for detention of mentally defective persons.

4. (1.) A reception-order may be obtained on application in writing, in the form prescribed by regulations or to the like effect, made and addressed to a Magistrate by any person not under twenty-one years of age (hereinafter called the applicant).

Application for reception-order.

(2.) Every such application shall contain a statement—

(a.) Of the grounds on which the applicant believes that the person in respect of whom the application is made is mentally defective ; and

(b.) Of the degree in which the applicant is a relative of the last-mentioned person, and, if he is not a relative or a near relative, the reason why the application is made by the applicant instead of by a relative or nearer relative ; and

(c.) That the applicant has within the three days preceding the day on which the application was signed personally seen the person in respect of whom the application is made.

(3.) Any such application may be accompanied by a medical certificate in the prescribed form, bearing a date not earlier than three days before the date of the application.

(4.) Every application shall be presented to the Magistrate on the day it is signed, or within seven days following that date.

(5.) All statements contained in the application shall, if required by the Magistrate, be verified by the statutory declaration of the applicant or of some other person.

(6.) Every such statutory declaration shall be exempt from stamp duty.

(7.) For the purposes of this section, the degree of relationship shall be determined in the following sequence :—

(a.) Husband or wife :

(b.) Father or mother :

(c.) Son or daughter :

(d.) Brother or sister :

(e.) Grandfather, grandmother, grandson, or grand-daughter :

(f.) Any other relative.

5. (1.) On the presentation of the application the Magistrate may examine the person alleged to be mentally defective at his abode or elsewhere, and for the purpose of further inquiry shall call to his assist-

Examination by Magistrate and two medical practitioners.

ance two medical practitioners who are not prohibited by section twelve hereof from signing a certificate, and such medical practitioners shall either together or separately examine that person.

(2.) Unless in the opinion of the Magistrate there is sufficient reason to the contrary, one of the medical practitioners called to his assistance shall be the usual medical attendant of the person alleged to be mentally defective.

(3.) The Magistrate may also summon as witnesses such persons as he thinks fit to give evidence touching the mental condition of the said person.

(4.) If after such examination the medical practitioners are of opinion that the said person is mentally defective and requires detention as such, each shall sign and deliver to the Magistrate a certificate to that effect in the prescribed form, setting forth in the certificate the facts observed by him upon which such opinion is based.

(5.) Every such medical certificate shall bear date of the day on which the certifying medical practitioner last examined the person alleged to be mentally defective before the signing of the certificate.

(6.) Notwithstanding anything in this section, the Magistrate may, if he thinks fit, and if the medical practitioner signing the same is not prohibited as aforesaid, in any such inquiry accept the medical certificate (if any) accompanying the application as if the medical practitioner signing the same had been duly called to his assistance under this section; and every certificate so accepted shall for the purposes of this Act be deemed to have been given under this section on the date on which it was so accepted.

(7.) If on such certificates being given, and after hearing such other evidence (if any) as the Magistrate thinks fit, the Magistrate is satisfied that the said person is mentally defective and requires detention, he may make under his hand an order in the prescribed form (in this Act called a reception-order), authorizing the said person to be received and detained in an institution to be named in the said order.

(8.) No such reception-order shall be made after the expiration of seven days from the date of the said medical certificates, or where those certificates do not bear the same date, then after the expiration of seven days from the date of the certificate bearing the earlier date.

(9.) Subject to the provisions of the last preceding subsection, the Magistrate may adjourn the hearing and determination of any application for a reception-order from time to time and for such periods as he thinks fit, and may make such order as he thinks fit for the care, control, and detention of the person to whom the application relates, pending the determination of the application.

(10.) The Magistrate shall forthwith report to the Inspector-General the result of every such application.

6. (1.) Every reception-order shall be a sufficient authority to the person therein named and appointed for that purpose to take the person so found to be mentally defective and to deliver him forthwith to the Superintendent of the institution named in the order, and the said Superintendent may receive and detain him accordingly in pursuance of the order and of this Act.

(2.) No such person shall be so received into the institution unless the reception-order, the medical certificates, and a copy of the applica-

Reception-order
to be sufficient
authority for
taking and
detaining.

tion are at the same time or have already been delivered to the Superintendent.

7. Subject to the provisions of the next succeeding section, a reception-order shall cease to be of any force unless the person therein authorized to be received and detained in any institution is received into that institution accordingly on the day of the date of the order, or within the seven days immediately following that day.

Reception-order to be acted on within seven days.

8. (1.) When either of the medical practitioners giving a certificate under section five hereof has certified in writing to the Magistrate, either before or after the making of the order, that the person in respect of whom the certificate is given is not in a fit state to be removed, the Magistrate may, by writing indorsed on the order, suspend the removal of that person and make such order (if any) as he thinks fit for the temporary care and control of that person.

In certain cases removal of patient may be suspended.

(2.) The removal of that person shall thereupon be suspended until the same or some other Magistrate, on being satisfied by the certificate of some medical practitioner that such person is in a fit state to be removed and is still mentally defective, authorizes by indorsement on the reception-order the removal of that person to the institution named therein.

(3.) Unless the removal of that person is so authorized within one month after the date of the reception-order, the reception-order shall thereupon cease to be of any force or effect.

(4.) Unless that person is received into the said institution on the date on which his removal was so authorized, or within the seven days immediately following that date, the reception-order shall thereupon cease to be of any force or effect.

Procedure in Emergency.

9. (1.) In cases of urgency, where it is expedient either for the welfare of a person alleged to be mentally defective or in the public interest that such person should be placed under care and treatment before a reception-order can be obtained, the applicant may sign a request, addressed to the Superintendent of the institution named in the request, that the person so alleged to be mentally defective be received into that institution.

Procedure in emergency.

(2.) Such request shall be in the prescribed form, and shall contain the same statements as are required by section four hereof in the case of an application to a Magistrate.

(3.) The Superintendent of that institution may receive and detain the person in respect of whom the request is made on receiving the request, accompanied by a certificate in the prescribed form signed by one medical practitioner containing the particulars required in the case of a certificate under section five hereof, and, in addition, a statement that the matter is one of urgency :

Provided that no person shall be received into an institution under this section after the expiration of seven days from the date of the request or the medical certificate, whichever date is the earlier.

(4.) Within twenty-four hours after the reception of the said person the Superintendent shall forward to a Magistrate a copy (certified by the Superintendent) of the request and certificate, and the Magistrate shall thereupon, as soon as practicable, make inquiry, and proceed

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as directed by section five hereof, as if the request were an application under section four hereof.

(5.) In any such inquiry the Magistrate may, if he thinks fit, and if the medical practitioner signing the same is not prohibited by section twelve hereof from signing a certificate, accept the medical certificate accompanying the request as if the medical practitioner signing the same had been duly called to his assistance in accordance with the provisions of section five of this Act, notwithstanding the fact that the said certificate may be dated more than seven days before the making of the reception-order by the Magistrate, and every certificate so accepted shall for the purposes of this Act be deemed to have been given under section five hereof.

(6.) If on such inquiry the Magistrate refuses to make a reception-order, he shall forthwith give notice of his refusal to the Superintendent, and after receipt of that notice by the Superintendent it shall not be lawful to detain under this section the person in respect of whom the application was made.

Medical Certificates.

Medical certificate
to be evidence of
certain facts.

10. Every medical certificate given for the purposes of this Act shall for all purposes be evidence of the facts therein stated as known to or observed by the certifying medical practitioner, and of the opinion therein stated to have been formed by the certifying medical practitioner as to the condition of the person to whom the certificate relates.

Particulars to be
contained in medical
certificate.

11. Every medical practitioner giving a certificate under section five hereof shall, so far as he is able, in addition to the facts indicating mental defect observed by him on the date of the certificate, state therein—

- (a.) Any further facts indicating mental defect observed by him on any other occasion, and the date of that occasion :
- (b.) Any facts indicating mental defect communicated to him by others, and the names and addresses of the persons who communicated those facts :
- (c.) The class as set forth in the definition of "mentally defective person" to which in his opinion the person in respect of whom the certificate is given properly belongs :
- (d.) What in his opinion are the factors which caused the mental defect :
- (e.) Whether in his opinion the person alleged to be mentally defective is suicidal or dangerous :
- (f.) What treatment (if any) has been employed for that person in respect of his mental condition :
- (g.) What is the bodily health and condition of that person, with special reference to the presence or absence of communicable disease and recent injury.

Who may not sign
certificate.

12. (1.) A medical certificate given under section five hereof shall not be signed by any of the following persons :—

- (a.) The applicant for the reception-order :
- (b.) The Superintendent, Medical Officer, or licensee of the institution into which (if granted) the reception-order would authorize the person alleged to be mentally defective to be received :

- (c.) The householder of the house into which (if granted) the reception-order would authorize the person alleged to be mentally defective to be received as a single patient:
- (d.) The husband or wife, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, or the partner, principal, or assistant of any of the persons mentioned in paragraphs (a), (b), or (c) of this subsection, or of the person alleged to be mentally defective, or the guardian or trustee of that person:

(e.) An Inspector or Official Visitor under this Act:

(f.) Any person by whom the reception-order is made.

(2.) Neither of the persons signing any such medical certificate shall be the father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law, husband or wife, or the partner, principal, or assistant of the other of them.

(3.) Every such certificate shall contain a statement that the certifying medical practitioner is not prohibited by this Act from signing the same.

13. (1.) There shall be payable to medical practitioners out of the Consolidated Fund, in respect of any certificates given by them on the direction of a Magistrate, or accepted by a Magistrate under subsection six of section five or subsection five of section nine of this Act, such fees as the Magistrate directs in accordance with any scale from time to time prescribed by regulations.

Fees payable on account of medical certificates.

(2.) On any application for a reception-order the Magistrate hearing the application may, having regard to the circumstances of the case, make an order for the payment to the Clerk of any Magistrate's Court, by some person liable for the maintenance of the person with respect to whom the application is made, of a sum sufficient to pay the fees payable to medical practitioners in accordance with the said scale, and the cost of taking the mentally defective person to the institution or other place in which he is to be received and detained, and any such order may be enforced in the same manner as an order for the payment of money under the Justices of the Peace Act, 1908.

(3.) All moneys paid to the said Clerk in accordance with such order shall be paid by him into the Public Account to the credit of the Consolidated Fund.

(4.) When a reception-order has been made in respect of any mentally defective person, all fees paid under this section out of the Consolidated Fund to medical practitioners shall be deemed to form part of the cost of his maintenance in a public institution, and shall be recoverable accordingly.

Amendment of Orders and Certificates.

14. (1.) If a reception-order is, before or within one month after the reception of any mentally defective person in pursuance thereof, found to be in any respect incorrect or deficient, the order may be amended by the Magistrate signing the same.

Magistrate may amend reception-orders.

(2.) If a medical certificate given under section five hereof is found to be in any respect incorrect or deficient, it may, before the reception

Medical practitioner may, with consent, amend certificate.

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of the person in respect of whom it is made or within one month thereafter, with the consent of the Magistrate who made the reception-order, or of the Inspector-General, be amended by the medical practitioner who signed the certificate.

Inspector-General may require amendment of reception-orders and certificates.

(3.) If the Inspector-General deems any reception-order, or any certificate given under section five hereof, to be in any respect incorrect or deficient, he may at any time require the same to be amended by the person who signed the same; and if the same is not so amended to the satisfaction of the Inspector-General, he may direct that a fresh inquiry be made under section five hereof, or he may, if he thinks fit, make an order for the discharge of the person detained thereunder, and he shall be discharged accordingly.

(4.) Every order and certificate amended under the provisions of this section shall take effect as if the amendment had been contained therein when it was signed.

(5.) If the Inspector-General directs that a fresh inquiry be made, the Magistrate shall accept such direction in lieu of an application under section four hereof.

Lapse of Reception-orders.

Lapse of reception orders unless renewed during month of December in each year.

15. (1.) Every reception-order shall cease to be in force at the end of the thirty-first day of December in any year after that in which it was made, unless on that date the Inspector-General is in receipt of a certificate by the Medical Officer of the institution in which the patient is detained, or the medical practitioner appointed to attend a single patient, signed by the said Medical Officer or medical practitioner during such month of December, to the effect that he has considered the case of the patient to whom the order refers and is of opinion that his further detention is for his own good or in the public interest.

(2.) If, by reason of the absence of any patient from the institution or house in which he has been received, whether because of his escape therefrom or because permitted to be absent on leave, no such certificate has been given, the reception-order shall, notwithstanding the last preceding subsection, continue in force; but in such case the reception-order shall cease to be in force upon the expiry of one month after the day on which the patient returns, unless within that period the said Medical Officer or medical practitioner, as the case may be, certifies in manner aforesaid that he has within that time considered the case of the patient and is of opinion that his further detention is for his own good or in the public interest.

(3.) For the purposes of this section a certificate shall be deemed to have been received by the Inspector-General on the date aforesaid if it is posted to him in time to reach him in the ordinary course not later than that date.

(4.) All reception-orders in force at the commencement of this Act shall for the purposes of this section be deemed to have been made in the year immediately before such commencement.

Duty of Constables in certain Cases.

Constable to apply for reception-order in certain cases.

16. Every constable who has reasonable cause to believe that any person—

(a.) Is mentally defective; and

(b.) Is neglected or cruelly treated by any person having the care or charge of him, or is suicidal or dangerous, or acts in a manner offensive to public decency ; and

(c.) Is not under proper oversight, care, or control—

shall forthwith make or cause to be made to a Magistrate an application for a reception-order in respect of that person in accordance with the provisions of section four hereof, and may, if necessary, apprehend any such person found wandering at large and bring him before a Magistrate.

17. Every Magistrate to whom any application is made for a reception-order in respect of any person may, if he thinks fit, by a warrant under his hand in the prescribed form, at any time before the reception-order has been made, require any constable to apprehend that person and bring him before such Magistrate to be examined and otherwise dealt with in accordance with this Act.

Magistrate may order arrest of person in respect of whom an application for a reception-order has been made.

18. (1.) Whenever any person in respect of whom an application for a reception-order has been made to a Magistrate is brought before that Magistrate in custody under the provisions of this Act, the Magistrate may make such order as he thinks fit for the care, control, and detention of that person in any institution or other place pending the determination of the application.

Magistrate may make special order for detention pending the determination of the application.

(2.) Unless the Magistrate is of opinion that there is good reason for so doing, no such order shall be made for the detention of any person in a prison or other place used for the detention of criminals.

PART II.

SINGLE PATIENTS.

19. (1.) Subject to the provisions of this section, a Magistrate may, in any reception-order made by him in respect of any mentally defective person, direct that such person shall be received and detained in the house of some householder instead of in an institution.

Detention of single patients.

(2.) A person in respect of whom any such reception-order is so made, or who is lawfully transferred to any such house, is in this Act referred to as a single patient.

(3.) No such reception-order shall be made unless the medical practitioners signing the medical certificates certify that it would be safe and convenient that the person alleged to be mentally defective should be received and detained as a single patient instead of in an institution.

(4.) Before making any such reception-order the Magistrate shall examine the said householder, and shall satisfy himself, by such means as he thinks fit, that the householder is a proper person to have the charge of the person so to be received, and that his house and its surroundings are suitable for the reception and detention of that person.

(5.) All the provisions of Part I of this Act as to the reception and detention of persons in an institution shall, so far as applicable, and subject to the provisions of this Part of this Act, apply to the reception and detention of single patients.

20. (1.) It shall be the duty of every householder in whose house a single patient is received (in this Act referred to as the householder) to cause the patient to be visited by a medical practitioner at such

Single patients to be regularly attended by medical practitioner.

intervals and in such manner as the Inspector-General from time to time directs.

(2.) Such medical practitioner shall be either the householder himself or some other person appointed by the householder from time to time for this purpose :

Provided that neither of the medical practitioners who gave the certificates on which the reception-order for the reception and detention of any single patient was made shall be appointed as a medical practitioner under this section to visit that patient during the twelve months immediately succeeding the date of the reception-order.

(3.) Notice of the name and address of the medical practitioner so from time to time appointed shall, within twenty-four hours after the appointment, be sent to the Inspector-General.

(4.) It shall be the duty of such medical practitioner on each visit to enter and sign in a book to be kept by the householder for that purpose, and called the Medical Visitation Book, the date of the visit, together with such particulars regarding the patient as are from time to time prescribed by regulations, or required in any particular case by the Inspector-General.

(5.) Where the medical practitioner is himself the householder entries shall be made in the Medical Visitation Book as required by regulations.

(6.) This book shall be produced to any Inspector or Official Visitor on request, and shall be signed by him as having been so produced.

(7.) Any medical practitioner who wilfully omits to state in the Medical Visitation Book any material particulars so prescribed or required, or wilfully makes an untrue entry therein, is guilty of an indictable offence.

21. Every householder who receives any single patient into his house under a reception-order shall,—

(a.) Within twenty-four hours after the reception of the patient, send to the Inspector-General a notice of the admission, together with a copy of the reception-order and of the application and medical certificates accompanying the reception-order ; and

(b.) Within twenty-four hours after the making by the medical practitioner of any entry in the Medical Visitation Book, send to the Inspector-General a copy of that entry.

22. The householder into whose house a single patient is received shall send the same notices and statements of the death, discharge, transfer, leave of absence and return from leave, cancellation of leave, escape and return after escape, of the patient as are in this Act required in the case of a patient in an institution ; and the said notices and statements shall be sent to the same person, and within the same periods, as if the patient were in an institution.

23. (1.) Every householder receiving any single patient is liable to a fine not exceeding twenty pounds who fails to conform to any of the requirements of the three last preceding sections.

(2.) If any householder sets forth in any notice or statement required to be sent by him under any of the three last preceding sections any particulars which are known by him to be incorrect or misleading, he shall be guilty of an indictable offence.

Householder in charge of single patient to send notice of admission, &c., to Inspector-General.

Householder to give like notices as if patient were confined in an institution.

Offences by householder.

PART III.

PROCEDURE IN CASE OF MINORS.

24. (1.) Any person under the age of twenty-one years who is mentally defective may be received and detained in an institution on application to the Inspector-General in the prescribed form, made by the parent or guardian who is for the time being entitled to the custody or guardianship of the said person.

Reception into institution of persons under twenty-one years on application of parent or guardian.

(2.) The application shall be verified by a statutory declaration, and shall be accompanied by a certificate signed by two medical practitioners in the prescribed form.

(3.) Every such statutory declaration shall be exempt from stamp duty.

(4.) On receipt of any such application the Inspector-General may, if he thinks fit, make an order under his hand for the reception and detention in an institution of the person to whom the application relates.

25. Any person under the age of twenty-one years who is detained in an institution under the provisions of section twenty-four hereof shall, on the application in writing to the Inspector-General of any parent or guardian who would for the time being be entitled in accordance with that section to make application for his detention, be discharged, unless, within seven days after the receipt of the application, the Superintendent forwards to a Magistrate a certificate under the hand of the Medical Officer that in his opinion the further detention of the said person is desirable for his own good or in the public interest. Such certificate shall be deemed to be an application within the meaning of section four hereof, and shall be dealt with accordingly; and the said person may be lawfully detained until the application is so dealt with and determined.

Discharge of person under twenty-one years on application of parent or guardian.

26. On the day on which any person who has been received and detained under the authority of section twenty-four hereof attains the age of twenty-one years he shall be discharged, unless on or before that day the Superintendent forwards to a Magistrate a certificate under the hand of the Medical Officer that in his opinion the further detention of the said person is desirable for his own good or in the public interest. Such certificate shall be deemed to be an application within the meaning of section four hereof, and shall be dealt with accordingly; and the said person may be lawfully detained until the application is so dealt with and determined.

Discharge of such persons on attaining age of twenty-one years.

27. Subject to the provisions of this Part of this Act, no person who is under the age of twenty-one years shall be received and detained in an institution except in pursuance of a reception-order made by a Magistrate under section five hereof.

Cases in which ordinary reception-order necessary.

28. If, on any inquiry under section eighty-five hereof, the Magistrate is satisfied that any patient detained under section twenty-four hereof is not fit to be discharged, he shall make a reception-order for the reception and detention of that patient, and such order shall for all purposes of this Act be deemed to be a reception-order under section five hereof.

Order in case of inquiry under section 85.

29. In the absence of evidence of the actual age of any person detained under this Part of this Act, his age shall, for the purposes of this Act, be deemed to be that stated in the application for his

Superintendent to estimate age of persons detained under this Part if

age not otherwise known.

reception and detention, or if his age is not so stated or is not otherwise known, then to be that estimated by the Superintendent on his admission into the institution and entered in the prescribed register, and in such case he shall be deemed to attain the age of twenty-one years on the thirty-first day of December in the year in which, according to the estimate so made, he attains the age of twenty-one years.

Education of mentally defective children.

30. Nothing in this Act shall affect the provisions of section eleven of the Education Amendment Act, 1910 (relating to epileptic and feeble-minded children), and any minor received into an institution under this Act may be sent to any special school within the meaning of that section, and shall thereupon be subject to the provisions of the Education Amendment Act, 1910, and shall cease to be subject to the provisions of this Part of this Act.

PART IV.

MENTALLY DEFECTIVE PERSONS UNDER DETENTION FOR OFFENCES, ETC.

In certain cases of indictable offence jury to find specially if person charged was insane at time of offence.

31. (1.) If upon the trial of any person charged with an indictable offence it appears in evidence that he was insane at the time of the commission of the offence, and he is acquitted, the jury shall be required to find specially whether he was insane at the time of the commission of the offence, and to declare whether he was acquitted on account of his insanity.

Person so found insane to be kept in confinement.

(2.) If the jury finds that such person was insane at the time of the commission of the offence, and declares that he was acquitted on account of his insanity, the Court before whom the trial is had shall order him to be kept in strict custody in such institution, prison, or place of confinement as to the Court seems fit, until the pleasure of the Minister of Justice is known.

Where person found insane upon arraignment, Court to direct record of finding, and person arraigned to be kept in confinement.

(3.) For the purposes of this Part of this Act a person shall be deemed to be insane if he would have been deemed to be a lunatic if this Act had not passed.

32. If any person indicted for any offence is upon arraignment found by a jury to be insane so that he cannot plead to the indictment, the Court before whom he is brought to be arraigned as aforesaid shall direct such finding to be recorded, and thereupon shall order him to be kept in strict custody in such institution, prison, or place of confinement as to the Court seems fit, until the pleasure of the Minister of Justice is known.

Plea of "Not guilty" to be substituted for plea of "Guilty" in certain cases.



33. (1.) If any person indicted for any offence pleads "Guilty" upon his arraignment, or if any person is committed to the Supreme Court for sentence on a plea of "Guilty," and it appears to the Court from the depositions or otherwise that there is evidence that he was insane at the time of the alleged offence, the Court may, if it thinks fit, direct that a plea of "Not guilty" shall be recorded, instead of a plea of "Guilty," and thereupon the trial shall proceed in like manner as if he had pleaded "Not guilty" in due course of law.

(2.) If, on the hearing of any information before a Magistrate or Justices in respect of an indictable offence, the defendant pleads "Guilty" under the provisions of section one hundred and seventy-six of the Justices of the Peace Act, 1908, and the Magistrate or

Justices have reason to believe that the defendant was insane at the time of the committing of the alleged offence, the Magistrate or Justices may refuse to accept the plea of "Guilty," and may commit the defendant for trial as if no such plea had been made.

34. If any person is ordered to be kept in custody until the pleasure of the Minister of Justice is known, under the provisions of section thirty-one or of section thirty-two hereof, it shall be lawful for the said Minister, by warrant under his hand, to give such order for the detention of that person during the pleasure of the said Minister in such institution, prison, or place of confinement, and in such manner, as the said Minister thinks fit, and from time to time as he thinks fit to direct, by warrant under his hand, the transfer of that person to any other institution, prison, or place of confinement.

35. If it is made to appear to the Minister of Justice by the certificate of two medical practitioners or of the Medical Officer of a public institution that any person found to be insane upon arraignment under section thirty-two hereof, and detained by order of the said Minister, has become of sound mind so as to be able to plead to the indictment found against him, the said Minister may by warrant under his hand, direct such person to be brought up at the next sitting of the Court in which the indictment was found, to be arraigned upon the same.

36. (1.) When any person is in confinement by order of the Minister of Justice after acquittal on a charge of an indictable offence on the ground of insanity, if the offence charged is not punishable by death or imprisonment for life, then the said Minister may, if, after such inquiry as he thinks fit, he is satisfied that such person is of sound mind, or that he is harmless and may be discharged without danger to himself or others, discharge him by warrant in writing.

(2.) The said Minister may, after such inquiry as he thinks fit, allow any such person to be absent on probation on such conditions as the Minister thinks fit; and may, if any of the conditions of such probation appear to the Minister to be broken, or for any other reason, by warrant direct the person so permitted to be absent to be taken and conveyed to some institution, prison, or place of confinement named in the warrant, and such person may thereupon be taken in the like manner as if he had escaped from such institution; and if such institution is not the one in which he was last detained, he shall be received and detained therein as if he had been transferred thereto in pursuance of this Act.

(3.) If the offence with which such person is charged is punishable by death or imprisonment for life, then the power to discharge such person or to allow him to be absent on probation conferred by this section on the Minister of Justice shall be exercised by the Governor in Council, and not by the Minister.

(4.) No person shall be discharged or allowed to be absent on probation pursuant to this section unless two medical practitioners appointed by the Minister certify that he is a fit person to be so discharged or allowed to be so absent on probation.

37. (1.) Where in the case of any person who is in confinement awaiting his trial or sentence for any criminal offence it appears to the Minister of Justice necessary or expedient that the mental

In certain cases
Minister of Justice
may order detention
of insane persons.

Why prison?
Probably, applies sec 32
only.

If person found
insane upon
arraignment
recovers sanity,
he may thereupon
be tried upon
indictment.

? Shall

Conditions on
which person in
confinement may
be discharged or
allowed to be
absent on
probation.

Why? Not a prisoner

see sec 80.

Detention in
institution in certain
cases of persons
awaiting trial for
offences.

How?

condition of that person should be under observation in an institution, the Minister may, by order under his hand, direct that such person shall be removed to some institution there to be detained under observation for such period as the Minister thinks fit, pending his trial or sentence.

(2.) Every such person while so detained shall be deemed to remain in the lawful custody of the Gaoler of the place in which he was confined before such removal.

Transfer of mentally defective persons from prison or reformatory institution to institution under this Act.

38. (1.) This section applies to any person imprisoned or detained in any prison, reformatory institution, industrial school, or other place of confinement under any sentence, conviction, warrant, or order, but does not apply to any person to whom the preceding provisions of this Part of this Act apply.

(2.) The Minister of Justice, if it is made to appear to him by any means that there is reasonable ground to believe that any person so in confinement is mentally defective, and that removal to an institution is desirable, may direct a Magistrate to examine that person and to make inquiry into his state of mind.

(3.) The said Magistrate shall thereupon examine that person, and shall make inquiry into his state of mind in the same manner, subject to all necessary modifications, as if an application for a reception-order had been made to that Magistrate. *see 100) 23 one doctor may be on staff of institution*

(4.) If the said Magistrate after such inquiry certifies in writing to the Minister of Justice that he has held such inquiry, and is of opinion that such person is mentally defective, and that his removal to an institution is desirable, the Minister of Justice may, if he thinks fit, by warrant under his hand, direct that such person shall be removed to such institution as the said Minister thinks fit; and the Minister having the administration of this Act may from time to time, by warrant under his hand, direct the transfer of that person to any other institution. *see 10(2) 25 pending receipt of warrant telegraph or by responsible officer sufficient authority*

(5.) The Minister having the administration of this Act may at any time, if he thinks fit, by warrant under his hand, direct that any person who has been so removed to an institution under the authority of this section shall be returned to the prison, reformatory institution, industrial school, or other place of confinement from which he was so removed, to undergo his sentence or otherwise to be dealt with according to law as if no such warrant for his removal to an institution had been issued:

Provided that a warrant shall not be issued under this subsection for the return of any person as aforesaid unless two medical practitioners appointed by the Minister certify in writing that he no longer requires to be detained in an institution under this Act.

(6.) If at the time when the period of imprisonment or custody of any such person expires in accordance with the sentence, conviction, warrant, or order under which he was imprisoned or confined, that person is detained in any institution under a warrant issued in accordance with this section, he shall thereupon be deemed for all purposes to be a patient detained under a reception-order made at the time when the period of his imprisonment or custody so expired, and to be no longer detained under this Part of this Act.

(7.) In respect of any person confined in an industrial school, any Magistrate may, without the direction of the Minister of Justice, make

? Does this sec apply to person sentenced to death

See sec 43
Criminal Act 1908

such examination and hold such inquiry as is mentioned in this section ; and, if he is of opinion that the person so confined is mentally defective and that his removal to an institution is desirable, the said Magistrate may, by warrant under his hand, direct that person to be removed to such institution as the Magistrate thinks fit, and all the provisions of this section shall thereupon apply to that person accordingly as if he had been so removed under the warrant of the Minister of Justice.

PART V.

VOLUNTARY BOARDERS.

39. (1.) Notwithstanding anything in this Act, it shall be lawful for the Superintendent of an institution to admit and detain any person in that institution for care and treatment as a voluntary boarder upon that person's signing a request in the prescribed form containing a statement that he is aware that as a consequence of his so signing he is liable to be detained in the institution for seven days after any application in writing by him to be discharged has been received by the Superintendent.

Procedure for
admission of
voluntary boarders.

(2.) The Superintendent shall refuse to admit any person under this section if the Medical Officer is of opinion that the case is not a proper one for care and treatment in that institution or that such person ought more properly to be received under a reception-order made by a Magistrate.

(3.) Within twenty-four hours after such admission the Medical Officer shall sign a certificate setting forth his opinion of the case and any recommendation he may wish to make.

(4.) The Superintendent shall within the same time send to the Inspector-General that certificate, together with a notice of the admission, a copy of the request, and (except in the case of a licensed institution) a statement of the provision made by or on behalf of the person so admitted for his maintenance while a boarder in the institution.

(5.) The Inspector-General shall thereupon place the said documents before the Minister, who shall in his discretion make an order concerning that person—

(a.) Requiring him to be discharged forthwith ; or

(b.) Consenting to his further detention.

(6.) If, in the opinion of the Inspector-General or the Medical Officer, a boarder shows mental defect in degree sufficiently pronounced and sustained to render it improper for him to reside in the institution under the provisions of this section, the Superintendent shall communicate such opinion in writing (or by telegraph, if necessary) to some relative or friend of the boarder (if any) named in the proper register.

(7.) If there is no such relative or friend, or unless, within three days after the despatch of the said communication, application for a reception-order in respect of the boarder is made by that relative or friend to a Magistrate exercising jurisdiction in the district in which the institution is situated, the Superintendent shall himself make application forthwith.

40. A voluntary boarder shall be discharged—

(a.) On the order of the Minister, or the Inspector-General, or the Medical Officer of the institution ; or

Discharge of
voluntary boarder.

- (b.) On his own application in writing to the Superintendent, in which case it shall not be lawful to detain the boarder for a longer period than seven days after the day upon which that application was received.

PART VI.

PUBLIC AND LICENSED INSTITUTIONS.

Officers.

Appointment of
officers.

Refer: 1928 Inset.

41. (1.) The Governor may appoint—
- (a.) An Inspector-General of Mental Defectives and a Deputy Inspector-General, who shall be medical practitioners;
 - (b.) One or more Assistant Inspectors;
 - (c.) Such District Inspectors as he deems necessary, defining from time to time the district of each, and, unless the Governor considers in the case of any appointment that such qualification is unnecessary, at least one District Inspector in each district shall be a barrister or solicitor; and
 - (d.) Such Official Visitors as he deems necessary, defining from time to time the district of each.
- (2.) The Inspector-General, Deputy Inspector-General, and Assistant Inspectors shall be paid salaries out of such moneys as are appropriated for the purpose by Parliament.
- (3.) No person appointed under this section shall, if he receives any salary in respect of his office, carry on on his own behalf, or be the partner in medical practice of any person carrying on, the profession or business of a medical practitioner.
- (4.) Of the three persons holding office as Inspectors under the Lunatics Act, 1908, the two who are medical practitioners shall on the commencement of this Act be deemed to be appointed Inspector-General and Deputy Inspector-General respectively under this Act, in the order of their former appointment; and the third shall be deemed to be appointed an Assistant Inspector under this Act.
- (5.) Every person holding office as a Deputy Inspector or Official Visitor under the said Act shall on the commencement of this Act be deemed to be appointed a District Inspector or Official Visitor under this Act, as the case may be, for the provincial district in which he resides, or for such part thereof as the Governor in the case of any such person determines.

Duties of officers.

42. (1.) The Inspector-General shall have the general administration of this Act under the direction of the Minister.

(2.) The Deputy Inspector-General, Assistant Inspectors, District Inspectors, and Official Visitors shall, under the control of the Inspector-General, perform such official duties as they are severally called upon to perform under this Act or by the Inspector-General; and the Deputy Inspector-General may, when so authorized by the Minister, during the illness, absence from New Zealand, or other temporary incapacity, or on the death, of the Inspector-General, act in his name and on his behalf, and while so acting shall have and may exercise all the powers, duties, and functions of the Inspector-General.

Refer: 1928 Inset.

(3.) No District Inspector or Official Visitor shall exercise the functions of his office outside the district for which he is appointed.

43. (1.) For every public institution there shall be a Superintendent, who shall be appointed by the Governor, and who need not be a medical practitioner.

Appointment of Superintendent and Medical Officers of public institutions.

(2.) For every public institution there shall be a Medical Officer, who shall be appointed by the Governor, and shall be a medical practitioner.

(3.) The same person may be appointed Superintendent and Medical Officer, in which case he shall be designated as Medical Superintendent.

(4.) For any public institution the Governor may, if he thinks fit, appoint one or more Assistant Medical Officers, who shall be medical practitioners.

(5.) The Superintendent, Medical Officer, and Assistant Medical Officers of any public institution shall respectively perform such duties as from time to time are appointed for them by the Minister or are prescribed by this Act.

(6.) Any medical practitioner appointed by the Minister (whether an officer of the institution or not) may act temporarily in the place of the Medical Superintendent, Medical Officer, or Assistant Medical Officer of a public institution in case of the death, illness, or absence from the institution of any such officer.

(7.) Where the offices of Superintendent and Medical Officer are held by different persons, such person as the Minister may appoint shall act temporarily in place of the Superintendent of a public institution in case of the death, illness, or absence from the institution of the Superintendent.

(8.) The Minister may at his discretion transfer any Superintendent, Medical Officer, or Assistant Medical Officer from any one institution to another.

Public Institutions.

44. (1.) When any building is provided and maintained wholly or in part out of moneys appropriated for the purpose by Parliament, the Governor may, by Order in Council gazetted, declare that the building so provided, together with any land used or intended to be used in connection therewith, is a public institution within the meaning of this Act.

Governor may declare buildings to be public institutions.

(2.) Any such Order in Council may at any time be in the like manner revoked.

(3.) Any land or building at any time added to an institution shall be deemed to form part of that institution.

(4.) All places proclaimed as lunatic asylums under the authority of any former Act relating to lunatics, and so continuing at the commencement of this Act, shall be deemed to have been duly declared to be public institutions under the authority of this Act.

Licensed Institutions.

45. (1.) On payment of such fee as the Governor may prescribe, and subject to the provisions hereinafter contained, and to such other provisions and conditions as he thinks fit, the Governor may, by warrant under his hand, grant to any person (or to two or more persons jointly) a license during the Governor's pleasure to keep an institution for the reception and detention under this Act of mentally defective persons.

Governor may license institutions for detention of mentally defective persons.

(2.) Every such license shall specify the class or classes of mentally defective persons that may be received in the institution, and also the number of mentally defective persons of each sex that may be there detained at any one time; and the Governor may from time to time, by indorsement under his hand on the license, amend any such license with respect to the class and number of the persons that may be received and detained as aforesaid.

(3.) All licenses granted for the keeping of a house for the reception of lunatics under the provisions of Part IV of the Lunatics Act, 1908, and in force at the commencement of this Act shall be deemed to have been duly granted under the provisions of this section, and shall become subject to the provisions of this Act accordingly, and shall remain in force until revoked in accordance with this Act; and every such house shall, until the revocation of the license, be deemed to be a licensed institution within the meaning of this Act for the care and treatment of persons of unsound mind, and also of any other class of mentally defective persons so long as the means of classification and treatment are approved by the Inspector-General.

46. Any such license may be at any time revoked by the Governor by writing under his hand; but notice under the hand of the Minister of the intention so to revoke a license shall be given to the licensee or to the Superintendent of the licensed institution, or left at the institution, not less than twenty-eight clear days before the revocation.

47. The person or persons desiring to obtain such a license shall make application therefor in writing to the Minister, and the application shall contain or be accompanied by the following particulars:—

- (a.) The full name, place of abode, and occupation of such person or persons:
- (b.) A true and full description of the estate or interest of such person or persons in the proposed institution:
- (c.) A statement that the site of the proposed institution conforms to the requirements of the next succeeding section:
- (d.) A statement of the number of persons to be received in the proposed institution under this Act:
- (e.) A statement whether the license so applied for is for the reception of persons of the male or of the female sex, or for the reception of persons of both sexes; and, if for the reception of persons of both sexes, a statement of the number of each sex proposed to be received, and a statement of the means by which persons of one sex may be kept apart from persons of the other sex:
- (f.) A statement of the class or classes of mentally defective persons to be received in the proposed institution; and, if more than one class, a statement of the means by which persons of one class may be kept apart from persons of another class:
- (g.) A plan of the buildings, to be drawn upon a scale not smaller than eight feet to the inch, together with a full description of the drainage and other sanitary arrangements, and of the situation of the buildings; and a statement of the length, breadth, and height of every room and apartment therein, and a reference by a figure or letter to every such room or

Revocation of
license upon notice.

Application for
license.

apartment; and a statement as to the use to which every such room or apartment is intended to be put:

- (h.) A plan, to be drawn upon a scale not smaller than twenty chains to the inch, of the lands to be used and occupied in connection with the proposed institution, showing the position of the buildings, together with a statement of the area of land which is not covered by any building, and which is to be appropriated to the exclusive use, exercise, and recreation of the patients and boarders.

48. (1.) No such license shall be granted in respect of any institution until the proposed institution has been examined and approved by the Inspector-General.

License not to be granted until institution approved by Inspector-General.

(2.) No such license shall be granted in respect of any proposed institution situated within three miles in a direct line of the principal post-office of any borough having a population of five thousand or more, unless a license has been theretofore lawfully granted in respect of that institution or of any other institution built upon the site thereof, or upon any part of that site, under this Act or any former Act relating to lunatics.

(3.) A license lawfully granted shall not become invalid merely because, by reason of an increase of population or otherwise, the site of the institution ceases to conform to the requirements of this section with respect to the grant of a license.

49. A single license may, in the discretion of the Governor, be granted in respect of two or more buildings, whether or not the same are adjacent to one another, and in any such case those buildings shall be deemed to constitute a single institution.

License may be granted for two or more buildings to constitute one institution.

50. No structural addition or alteration shall be made to, in, or about any licensed institution, or the appurtenances thereof, unless previous notice in writing of the proposed addition or alteration, accompanied by a plan of such addition or alteration (to be drawn upon the scale aforesaid), and accompanied by such description as aforesaid, has been given by the licensee or Superintendent to the Inspector-General, and the consent in writing of the Inspector-General has been obtained.

Proposed alterations and additions to buildings to be approved by Inspector-General.

51. Every person commits an indictable offence who wilfully gives an untrue or incorrect notice, plan, statement, or description of any of the things required by section forty-seven or by section fifty hereof to be included in any notice, plan, statement, or description.

Indictable offence to wilfully furnish incorrect information as to description of buildings, &c.

52. (1.) For every licensed institution there shall at all times be a Superintendent, who shall reside in the institution, and shall be appointed from time to time by the licensee or licensees with the consent in writing of the Minister.

Appointment of Superintendent of licensed institution.

(2.) The licensee or one of the licensees may be so appointed as the Superintendent of the institution.

53. (1.) For every licensed institution there shall at all times be a Medical Officer, who shall be a medical practitioner, and shall be appointed from time to time by the licensee or licensees with the consent in writing of the Minister.

Appointment of Medical Officer of licensed institution.

(2.) The Medical Officer of an institution licensed for the reception of persons of unsound mind shall reside in the institution, and in the case of all other licensed institutions shall so reside if the Governor so determines.

(3.) The Superintendent and the Medical Officer of the institution may be the same person, in which case he shall be known as the Medical Superintendent.

(4.) The licensee or one of the licensees, if he is a medical practitioner, may be appointed as the Medical Officer or Medical Superintendent of the institution.

54. (1.) For every licensed institution in which for the time being the number of persons received under this Act is not less than one hundred there shall, if so required by the Governor, in addition to the officers already mentioned, be an Assistant Medical Officer, who shall reside in the institution, and who shall be a medical practitioner, and shall be appointed from time to time by the licensee or licensees with the consent in writing of the Minister.

(2.) Any licensee who is a medical practitioner and who is not the Superintendent or Medical Officer of the institution may be appointed as the Assistant Medical Officer.

55. (1.) If at any time any person who is by any of the three last preceding sections required to reside in the institution is incapacitated from performing his duties, or is about to be absent from the institution for more than three days, the Superintendent, or if the Superintendent himself is incapacitated, then the Medical Officer, shall in writing appoint some person (who shall in all cases where a medical practitioner is required by this Act be a medical practitioner) to act as deputy and in the place of the person so incapacitated or about to be absent; but no such deputy shall act for more than seven days unless authorized so to do by the Inspector-General.

(2.) Notice of every such appointment shall be sent to the Inspector-General within two days from the date thereof.

56. (1.) The Superintendent of a licensed institution shall, within seven days after the first employment in the institution of any nurse or attendant, send to the Inspector-General a notice thereof, stating the name of that nurse or attendant.

(2.) The Superintendent of a licensed institution shall, within seven days after any nurse or attendant has ceased to be employed in the institution, send to the Inspector-General a notice thereof, stating the reason why that nurse or attendant has ceased to be so employed.

(3.) Any Superintendent who neglects to send any such notice as is required in this section within the period aforesaid, or who wilfully makes any false statement in any such notice, is liable to a fine not exceeding twenty pounds for every such offence.

57. The provisions of Part VII of this Act shall apply, with the necessary modifications, to every licensed institution in the same manner as to public institutions.

58. Where any such license has been granted to two or more persons, and during the currency thereof any of those persons dies, leaving the other or others surviving, the license shall remain in force and have the same effect as if granted to the survivor or survivors.

59. On the application in writing, signed by the licensee of any institution and by any person to whom he desires that his license shall be transferred, the Minister may, if he thinks fit, by indorsement on the license, or otherwise in writing, transfer the license to that person, and thereupon that person shall become the licensee of the institution, with

Appointment of
Assistant Medical
Officer of licensed
institution in certain
cases.

Appointment of
deputies in certain
cases.

Notices to be
given to Inspector-
General regarding
nursing staff.

Part VII hereof
to apply to
licensed institutions.

Where two or
more licensees,
on death of
one, license deemed
to vest in survivor
or survivors.

Transfer of license
on application of
licensee.

the same privileges and obligations as if the license had been granted to him.

60. (1.) If the sole licensee of an institution dies, the Minister may, if he thinks fit, by indorsement on the license, or otherwise in writing, transfer the license to the executor or administrator of the licensee or to any person nominated by the executor or administrator, and the person to whom the license is so transferred shall thereupon become the licensee of the institution, with the same privileges and obligations as if the license had been granted to him.

Transfer of license on death of sole licensee.

(2.) In the meantime the institution shall be deemed to continue to be a licensed institution under this Act, and the officers thereof shall be deemed for the purposes of this Act to continue in office, in the same manner as if the licensee were still living.

(3.) If the license is not transferred under the authority of this section within two months after the death of the licensee, the Governor may, by writing under his hand, revoke the license without notice, and the institution shall, as from a day to be specified by the Governor, cease to be a licensed institution.

61. (1.) If any licensed institution is destroyed or damaged by fire, or by any other accident is rendered unfit (whether permanently or temporarily) for the accommodation of the patients or boarders, or of any of them, the Superintendent may provide temporary accommodation for those patients or boarders, or any of them, in such place or places as he thinks fit, and shall as soon as possible after such accident notify the Inspector-General thereof, and of the nature of the temporary accommodation provided.

Temporary premises when licensed institution rendered unfit by accident.

(2.) If the Inspector-General approves of such temporary accommodation, the Superintendent may there, during the pleasure of the Minister, receive and detain patients and boarders in the same manner as in the licensed institution, and such place or places shall be deemed part of the licensed institution of the licensee accordingly.

62. (1.) If, by reason of the rebuilding of any licensed institution or for any reason not provided for in the last preceding section, a licensee desires to transfer any patients or boarders temporarily to any building other than a licensed institution, the Minister may, if he thinks fit, grant to the licensee a permit to keep such other building for the reception and detention of patients or boarders for such time as the Minister thinks fit; but the Minister may at any time cancel that permit.

Temporary premises during rebuilding.

(2.) The like notice (accompanied by the like plans, statements, and descriptions) shall be given as to the building for which such permit is required as in the case of an application for a license under section forty-seven hereof, and shall be accompanied by a statement in writing of the reason for which such permit is required.

(3.) A building in respect of which a permit is so granted shall, during the currency of that permit, be deemed to be part of the licensed institution of the licensee, and patients and boarders may be transferred to or received and detained therein accordingly.

63. No license or permit granted by the Governor or by the Minister in pursuance or intended pursuance of this Act shall be invalid because any condition precedent to the granting thereof has not been duly fulfilled, or because the provisions and requirements of this Act have not been observed with respect thereto.

License not invalid by reason of non-fulfilment of condition precedent.

PART VII.

CARE AND TREATMENT OF MENTALLY DEFECTIVE PERSONS.

Registers and Notices.

Registers to be kept
by Superintendent.

64. (1.) In every institution the Superintendent shall enter or cause to be entered, at the times and in the manner prescribed by regulations, such particulars as may be prescribed, in the following books, which shall be kept in the prescribed form :—

- A Register of Admissions ;
- A Register of Boarders ;
- A Register of Discharges (including transfers) ;
- A Register of Absences on Leave (including returns from leave) ;
- A Register of Escapes (including returns from escape) ;
- A Register of Deaths ;

and such other books as may be prescribed.

(2.) The Superintendent shall be responsible for the proper keeping of all such books, except when the entries therein refer to the mental or bodily condition of the patient or boarder, in which case the Medical Officer shall be responsible.

Books to be kept by
Medical Officer.

65. In every institution the Medical Officer shall, at the times and in the manner prescribed by regulations, enter or cause to be entered in a book to be kept for that purpose, such particulars as may be prescribed in the following books, which shall be kept in the prescribed form :—

- A Weekly Report Book ;
- A Case-book ;
- A Prescription-book ;
- A Register of Restraint and Seclusion ;
- A Post-mortem Book.

Superintendent to
give to Inspector-
General notice of
admissions.

66. (1.) Within twenty-four hours after the admission of a patient the Superintendent shall send to the Inspector-General a notice of the admission, together with a copy of the order or other authority on which the patient was admitted and of all medical certificates and other documents which accompanied the said order or authority.

(2.) Within twenty-four hours after the admission of a patient the Superintendent shall send to the Inspector-General a preliminary statement as to the mental and bodily condition of the patient in the prescribed form signed by the Medical Officer.

(3.) Within fourteen days after the admission of a patient or boarder, the Superintendent shall send to the Inspector-General a statement as to the mental and bodily condition of the patient or boarder, to be signed by the Medical Officer in the prescribed form.

Notices of discharge,
transfer, &c.

67. Within twenty-four hours after the discharge or transfer, absence on leave, cancellation of leave, return from leave, escape, or return from escape of any patient or boarder, the Superintendent shall send a written notice thereof to the Inspector-General.

Notice as to death
and cause of death
of patient to be
sent to Inspector-
General.

68. (1.) In case of the death of any patient or boarder in an institution the Superintendent shall (in addition to any notice respecting the death required by any law in force relating to the registration of deaths) send to the Inspector-General, within twenty-four hours after the death,

a notice signed by the Medical Officer of the death and apparent cause of death, and the names of all persons present at the death.

(2.) A copy of such notice, signed as aforesaid, shall also, within the same twenty-four hours, be sent to the Coroner whose residence is nearest to the institution, and also to any relative or friend named in the proper register, or to the person who made the last payment on account of the patient or boarder.

69. Every Superintendent or Medical Officer who knowingly sets forth in any notice, statement, or entry required to be made by him under this Act any particulars that are untrue, or who in making any such notice, statement, or entry knowingly omits therefrom any material fact, is guilty of an indictable offence.

Offences by
Superintendent or
Medical Officer.

Visitation.

70. (1.) It shall be the duty of the Inspector-General to make provision for proper visitation by an Inspector or by an Official Visitor, so that every institution and every house in which a patient is detained shall be visited by an Inspector or by an Official Visitor once at least in every three months.

Visitations to be
made by Inspector
or Official Visitor.

(2.) Any Inspector or Official Visitor may without previous notice visit, as often as he thinks fit, any such institution or house.

(3.) When the Inspector-General has reason to believe or suspect that any mentally defective person, or person believed to be or treated as mentally defective, is residing in any house or place in breach of this Act, the Inspector-General may either himself visit that house or place, or by writing under his hand authorize an Inspector or Official Visitor to visit that house or place and to report to him on the matter.

(4.) When a notice has been sent pursuant to section one hundred and twenty-two hereof, or when a certificate has been sent pursuant to subsection six of section one hundred and twenty-three, the Inspector-General may, if he thinks fit, either himself visit the house or place in which the person to whom the notice relates is resident, or by writing under his hand authorize an Inspector or Official Visitor to visit that house or place and to report to him.

(5.) All visits made under the authority of this section may be made on such days and at such hours of the day or night, and for such length of time, as the Inspector or the Official Visitor, as the case may be, thinks fit.

(6.) On any such visit the Inspector or Official Visitor may, if the Inspector-General so requires, be accompanied by a medical practitioner named by the Inspector-General.

71. (1.) Every Inspector and Official Visitor, when visiting under the authority of this Act any institution, house, or place, may inspect every part thereof, and every part of the ground or appurtenances used or occupied therewith; and may see every person then detained or being therein.

Extent of inspection.

(2.) The Superintendent of an institution, or the occupier of any house or place visited by an Inspector or Official Visitor under the authority of this Act, and every officer or servant employed in any such institution, house, or place, commits an indictable offence who conceals or attempts to conceal, or refuses or wilfully neglects to show, any part of the institution, house, or place, or any part of the ground or appur-

Penalty for
obstruction.

tenances used or occupied therewith, or any person detained or being therein, from or to the Inspector or Official Visitor, or who in any manner impedes the Inspector or Official Visitor, in any visit by this Act authorized to be made by him.

(3.) Upon every visit of an Inspector or Official Visitor to any institution or to any house in which a single patient is detained there shall be laid before him by the Superintendent or householder—

(a.) A list of all the persons then detained in the institution or house, distinguishing males from females and patients from boarders, and specifying such as are deemed curable; and classifying the patients according to their class of mental defect as described in section two hereof;

(b.) The several registers and books required by this Act to be kept;

(c.) Such orders and other documents relating to any of the patients or boarders for the time being detained in the institution or house as the Inspector or Official Visitor requires to be produced to him; and

(d.) All letters written by patients or boarders which, pursuant to section seventy-six hereof, have not been forwarded.

(4.) The Inspector or Official Visitor shall sign the said registers and books under the last entry therein.

72. (1.) Every Inspector on any such visitation to an institution, or to any house in which a single patient is detained, may, and shall, if so required by the Inspector-General, inquire as to—

(a.) Any breach of this Act or of the regulations made thereunder, or as to any breach of duty on the part of any officer or servant employed in the institution or house:

(b.) Such other matters as the Inspector or the Inspector-General deems fit to be inquired into respecting any person detained therein, or as to the management of the said institution or house.

(2.) For the purposes of any such inquiry an Inspector may, by summons under his hand in the prescribed form, require any person to appear before him to testify on oath concerning any of the matters respecting which the Inspector is by this Act authorized to inquire (which oath the Inspector is hereby empowered to administer).

(3.) Every person who does not appear before an Inspector pursuant to such summons, and does not assign some reasonable excuse for not so appearing, or who appears and refuses to be sworn or examined, is liable for every such neglect or refusal to a fine not exceeding fifty pounds.

(4.) Any such Inspector may examine on oath any person appearing before him as a witness, or present at the time of any such inquiry, touching any of the matters aforesaid, although no such summons as aforesaid has been served upon him.

(5.) A full report of every such inquiry shall be sent as soon as practicable by the Inspector to the Inspector-General.

73. (1.) On every visit by an Inspector or Official Visitor he shall enter in a book (to be called the Visitation Book) to be kept for that purpose in the institution or house the fact of his visit, with such observations (if any) as he thinks fit.

Books, &c., to be produced.

Matters as to which Inspector may inquire.

Inspector may require evidence on oath.

Entry in Visitation Book.

(2.) A copy of every such entry shall be sent by the Superintendent or householder to the Inspector-General within forty-eight hours after the entry is made.

74. There shall also be kept in every institution and in every house where a single patient is detained a book to be called the Inspectors' Case-book, and any Inspector may enter therein such observations as he thinks fit respecting the state of mind or body of any patient or boarder in the institution or house.

Entry in Inspectors' Case-book.

75. (1.) The Inspector-General may give an order in writing for the admission to any patient or boarder detained in an institution or house of any relative or friend of the patient or boarder, or of any medical practitioner or other person whom any relative or friend of the patient or boarder desires to be admitted to him; and such order of admission may be given subject to such conditions as the Inspector-General thinks fit.

Inspector-General may authorize visits by relatives, &c.

(2.) Every Superintendent or householder who without reasonable justification refuses, prevents, or obstructs the admission to any patient or boarder of any person who produces such an order of admission is liable for every such offence to a fine not exceeding fifty pounds.

76. (1.) Every letter written by a patient or boarder in any institution, or in any house in which a single patient is detained, and addressed to any Minister of the Crown, Judge of the Supreme Court, or to the Inspector-General, or to an Inspector or Official Visitor, shall be immediately forwarded unopened.

Letters written by patients to Minister of Crown, &c., to be forwarded unopened.

(2.) Every letter written by any such patient or boarder and addressed to any person other than those above mentioned shall be immediately forwarded to the person to whom it is addressed, unless the Superintendent or the householder prohibits the forwarding of such letter by a memorandum to that effect under his hand on the letter; in which case he shall lay the letter before the Inspector or Official Visitor next thereafter visiting the institution or house, or he may before such visit forward the letter by post to an Inspector or Official Visitor, and in either case the Inspector or Official Visitor shall deal with and dispose of the letter as he thinks fit.

Superintendent may detain certain letters and submit to Inspector or Official Visitor.

(3.) The duty of so forwarding any letter written by a patient or boarder shall lie upon the Superintendent or householder.

(4.) Any officer or servant employed in any institution or house who is requested by a patient or boarder to forward any letter, or who has in his possession any letter written by a patient or boarder, shall immediately deliver the same unopened to the Superintendent or householder.

77. The Inspectors and Official Visitors shall report to the Inspector-General as occasion requires or as he directs.

Reports by Official Visitors and Inspectors.

78. (1.) The Inspector-General shall prepare an annual report for each year ending the thirty-first day of December, showing the number of patients of each sex and class detained under this Act, and the condition of the several institutions and other places in which they are detained, and shall present the report to the Minister before the first day of July in the following year.

Annual report by Inspector-General.

(2.) The report shall forthwith, after its presentation to the Minister, be laid before Parliament if in session, or if not, then within fourteen days after the commencement of the next ensuing session.

Enter: S 1913 No.

To be laid before Parliament.

Escapes.

Person escaped
may be retaken
within three months.

79. (1.) Any patient or boarder who escapes from the institution or house wherein he is detained may, on the day of his escape or at any time within three months immediately following that day, be retaken by any person.

(2.) Any patient or boarder who is so retaken may be returned to the institution or house from which he has so escaped.

(3.) If any such patient or boarder is not retaken within the period aforesaid, he shall thereupon be deemed to be discharged.

Notices to be given.

(4.) Within twenty-four hours after every such escape, return, or discharge an entry shall be made in the proper register, and notice thereof shall be given to the Inspector-General by the Superintendent or householder.

(5.) Every patient who escapes from custody while being removed from any institution or house in which he has been detained to any other institution or house to which he is being lawfully transferred shall be deemed to have escaped within the meaning of this section from the first-mentioned institution or house, and on being retaken within the period aforesaid shall be forthwith conveyed to the institution to which he was being removed, notwithstanding that the time limited by section eighty-two hereof for complying with an order of transfer may have elapsed.

Penalty for assisting
escape.

(6.) Every Superintendent, officer, or servant employed in or about any institution or house, or having the care of any patient or boarder, and every householder of a house in which a patient is detained, is guilty of an indictable offence if he wilfully permits or connives at the escape or attempted escape of a patient or boarder.

(7.) Every person commits an indictable offence who knowingly instigates or assists any patient or boarder to escape or to attempt to escape from any institution or house, or who knowingly assists any patient or boarder who has so escaped to avoid or attempt to avoid being retaken.

(8.) Nothing in this section limiting the time within which any patient may be retaken after escape, or providing for his discharge if not retaken, shall apply to the escape of persons in confinement under Part IV hereof, and any such person may be retaken at any time after his escape.

Absence on Leave.

Absence on leave
may be granted.

80. (1.) The Inspector-General may permit any patient to be absent from any institution or house under proper control on leave for such period not exceeding twelve months, exclusive of the days of departure and return, and on such conditions as he thinks fit.

(2.) The Superintendent of any institution, on the recommendation in writing of the Medical Officer, may permit any patient or boarder to be absent on leave from the institution under proper control for a period not exceeding twenty-eight days, exclusive of the days of departure and return, and on such conditions as the said Superintendent thinks fit.

(3.) The householder of a house in which a single patient is detained may, on the recommendation in writing of the medical practitioner

attending the patient, and with the written consent of an Inspector, permit the patient to be absent from that house on leave under proper control for a period not exceeding twenty-eight days, exclusive of the days of departure and return, and on such conditions as the said householder thinks fit.

(4.) Any period of leave so granted by any person may from time to time be extended by the Inspector-General, but no single period of extension shall exceed twelve months.

(5.) Any person so absent on leave may at any time during the currency of his period of leave be discharged on the receipt by the person who granted the leave of a medical certificate that he is no longer mentally defective, or that he no longer requires to be under oversight, care, or control.

(6.) The permission to be absent may at any time during the period of leave be cancelled by the person who granted it by notice in writing in the prescribed form to the person to whom the charge of the patient has been committed during the said period.

(7.) Any patient so absent on leave may at any time during the currency of his period of leave be taken and returned to the institution or house by the Inspector-General or the Superintendent, or the householder, or by any person acting under the authority of the said Inspector-General, Superintendent, or householder, or by any person to whom the charge of the said patient during his absence has been committed by the said Inspector-General, Superintendent, or householder. Cancellation of such leave.

(8.) If any patient so absent on leave fails to return to the institution or house in which he was detained, he shall, if his leave was cancelled as aforesaid, be deemed to have escaped on the date on which the leave was cancelled, and in any other case he shall be deemed to have been discharged as unrecovered on the date on which the leave expired, and shall continue to be liable to visitation by an Inspector or Official Visitor for such period as the Inspector-General deems advisable.

(9.) Nothing in this section shall apply to any person in confinement under Part IV of this Act.

Transfer of Patients.

81. (1.) The Inspector-General may, by writing under his hand in duplicate, order the transfer of any patient from any institution or house in which he is detained to any institution. RECEIVED: S. 1929 No. 3
Inspector-General may order transfer of patients.

(2.) The Inspector-General may, in like manner, order the transfer of any patient to any house approved by him for the purpose, and in every such case the patient so transferred shall be deemed to have been received into that house pursuant to Part II of this Act, and the provisions of that Part shall apply accordingly.

(3.) One duplicate of the order shall be sent to the Superintendent of the institution or the householder of the house from which the patient is to be transferred, and the other shall be sent to the Superintendent of the institution or the householder of the house to which the patient is to be transferred.

(4.) The order shall be a sufficient authority for the transfer of the patient, and for his reception into the institution or house to which he is ordered to be transferred.

(5.) No transfer under this section of any person who is in confinement under Part IV of this Act shall be ordered by the Inspector-General.

Transfer to be made within fourteen days.

82. (1.) Every such order of transfer shall be complied with on or as soon as practicable after the date thereof, but in any case within fourteen days after that date :

Provided that if the patient is not in a fit state to be removed within that period the Superintendent of the institution or the householder of the house in which he is detained shall send to the Inspector-General a certificate to that effect under the hand of the Medical Officer of the institution or the medical practitioner visiting the patient at that house, but shall in that case transfer the patient within fourteen days after he has become fit to be removed.

(2.) The transfer of a patient shall not be deemed to be completed until he is actually received into the institution or house to which he is transferred, and the responsibility for his care and control shall be determined accordingly.

(3.) Every Superintendent or householder who fails to comply with the provisions of this section is liable to a fine not exceeding ten pounds for every day during which the failure continues.

On transfer of patient, original reception-order, &c., and a certificate as to condition of patient, to be forwarded to Superintendent.

83. (1.) A copy (certified by the Superintendent or householder to be a true copy) of the reception-order and of the application and certificates which accompanied the reception-order, or of any other authority under which the patient was detained, shall be delivered to the Superintendent of the institution or the householder of the house to which the patient is transferred, together with a certificate under the hand of the Medical Officer of the institution from which he is so transferred, or of the medical practitioner attending a single patient, as the case may be, as to the mental and bodily condition of the patient immediately before his transfer, and as to all other material facts regarding that patient.

(2.) Such reception-order or other authority shall remain in force in the same manner as if the patient had been ordered to be received in the institution or house to which he is so transferred.

Discharge of Patients.

84. (1.) If it appears to the Minister that any patient has any relative or friend in any place beyond New Zealand who is willing to undertake the care and charge of him, and that it would be for his benefit if he were to be removed to that place, the Minister may, by warrant under his hand, authorize and direct the removal of that patient accordingly, and make such order as he thinks fit touching the custody of him pending his removal.

(2.) In any such case the Minister may, as a condition of issuing such warrant, direct that sufficient security be given, in such manner as he thinks fit, for the safe custody and the maintenance of that person after his removal from New Zealand.

(3.) Every person removed from any institution or house under the authority of this section shall be deemed to have been discharged.

85. (1.) When the Medical Superintendent of an institution is of opinion that any patient detained in the institution is fit to be discharged, he shall discharge him accordingly.

In certain cases patients may be discharged and removed from New Zealand.

Discharge of patient on certificate of Medical Officer, &c.

(2.) When the Medical Officer of an institution is of opinion that any patient detained in the institution is fit to be discharged, he shall give his opinion in writing to the Superintendent, who shall thereupon discharge the patient accordingly.

(3.) When the medical practitioner attending any single patient is of opinion that the patient is fit to be discharged, he shall give his opinion in writing to the householder of the house in which the patient is detained, and the said householder shall thereupon discharge the patient accordingly.

(4.) Where such Medical Superintendent, Medical Officer, or medical practitioner is of opinion that any patient is not fit to be discharged, but an Inspector, or Official Visitor, or any relative or friend of the patient is of a contrary opinion, such Inspector or Official Visitor shall, and such relative or friend may, report the matter to the Minister.

Where question of discharge referred to Minister.

(5.) The Minister shall consider such report, and also, among other matters, any statement by the Medical Superintendent, Medical Officer, or medical practitioner, giving the grounds on which he considers the patient unfit to be discharged although for the time being the patient may not appear to be mentally defective, giving due weight to circumstances precedent to the admission of the patient, to the history of the case as shown in the case-book, and to any other reason why, for his own good or in the public interest, that patient should not be discharged.

(6.) If after such consideration the Minister is of opinion that further inquiry is necessary or expedient, he shall direct a Magistrate to hold an inquiry as to whether the patient is fit to be discharged, and the Magistrate shall hold an inquiry accordingly.

Inquiry by Magistrate as to condition of patient.

(7.) Notice of the inquiry shall be given to the said Medical Superintendent, Medical Officer, or medical practitioner, as the case may be, who shall be entitled, if he so desires, to give evidence at the inquiry.

(8.) In making the inquiry the Magistrate shall see and examine the patient, and may, by summons under his hand, require any person to appear before him to testify on oath concerning the subject-matter of the inquiry, and may hear such evidence on oath as he thinks fit, and may order the Superintendent or householder, or any other person having the custody or charge of the patient, to produce the patient before the Magistrate for examination as aforesaid.

(9.) Any person who without reasonable justification or excuse fails to appear before the Magistrate in obedience to any such summons, or who appears and refuses to be sworn or examined, or who without reasonable justification or excuse fails to produce the patient for examination in pursuance of any such order, shall be liable to a fine not exceeding fifty pounds.

(10.) If on any such inquiry the Magistrate is satisfied that the patient is fit to be discharged, he shall, by order under his hand, direct him to be discharged, and he shall be immediately discharged accordingly:

Provided that this subsection shall not apply to any person who is in confinement under the provisions of Part IV of this Act.

(11.) The Magistrate shall report the result of every such inquiry to the Minister.

(12.) A patient shall be deemed to be fit to be discharged when his detention as a mentally defective person is no longer necessary either for his own good or in the public interest.

Judge may direct inquiry as to condition of patient, &c.

86. (1.) A Judge of the Supreme Court may, whenever he thinks fit, whether of his own motion or on the application of any person, by order under his hand, direct an Inspector or any one or more persons whom he may select in that behalf to visit and examine any person who the said Judge has reason to believe is detained as mentally defective in any institution, house, or other place, and inquire into and report on such matters relating to that person as the Judge thinks fit.

(2.) A Judge of the Supreme Court may, whenever he thinks fit, whether of his own motion or on the application of any person, and whether any such order as is referred to in the last preceding subsection has been made or not, by order under his hand, direct the Superintendent of any institution, or the occupier of any house or other place, in which the Judge has any reason to believe or suspect that any person is detained as mentally defective, or any person having the custody or charge of that person, to bring that person before the said Judge in open Court or in Chambers, for examination at a time to be specified in the order.

(3.) If on the examination of the person so ordered to be brought before him, and on the evidence of any medical or other witnesses (power to summon whom to testify on oath in the matter of such examination, and to produce any documents, is hereby given to the Judge), it appears to the satisfaction of the Judge that such person is not mentally defective, or that his state of mind does not require his detention as a mentally defective person, either for his own good or in the public interest, or that such person is illegally detained as a mentally defective person, the Judge shall by order direct that he shall be immediately discharged by the Superintendent of the institution, or the occupier of the house or other place, in which he is detained, or by any other person in whose custody or charge he is, unless the person so detained is in confinement under Part IV of this Act or is legally detained for some other cause.

(4.) In determining in pursuance of this section whether the state of mind of any person requires that he should be detained as a mentally defective person for his own good or in the public interest, the Judge may take into consideration the fact that some relative or friend of that person is able and willing to exercise sufficient oversight, care, or control of him, and may, as a condition of making an order for his discharge, require an undertaking in writing from such relative or friend to exercise such oversight, care, or control of the person so discharged for such time and in such manner as the Judge requires and as are in the said undertaking set forth. Any person who wilfully fails to fulfil any undertaking so given by him shall be deemed guilty of a contempt of the Supreme Court, and may be dealt with accordingly in due course of law.

(5.) Nothing in this section shall be deemed to prevent the exercise of any other remedy or proceeding available by or on behalf of any person who is or is alleged to be unlawfully detained, confined, or imprisoned.

PART VIII.

ADMINISTRATION OF ESTATES OF MENTALLY DEFECTIVE PERSONS.

Committees and Inquisitions.

87. (1.) It shall be the duty of every Magistrate making a reception-order, and of every other person who under the authority of this Act makes any order for the reception and detention of any person or for the confinement of any person under Part IV of this Act, forthwith to send notice of the order to the Public Trustee.

Notice of reception-orders, admissions, discharges, and deaths to be sent to Public Trustee.

(2.) It shall be the duty of every person who is required by this Act to send to the Inspector-General notice of the admission, death, or discharge of a patient to send at the same time to the Public Trustee a notice intimating such admission, death, or discharge.

REFER TO Act. VIDE INSET

88. (1.) In the case of any patient (~~if no committee or administrator of his estate has been appointed~~), under this Act or under Part III of the Prisons Act, 1908) the Public Trustee shall have the custody and administration of his estate, and shall have in respect of that estate the same powers, duties, and functions as if he had been appointed the committee thereof under the provisions of this Act.

Public Trustee to administer estate of patient in certain cases.

AMENDED: VIDE INSET

(2.) The powers, duties, and functions of the Public Trustee under this section shall cease—

(a.) When the person of whose estate he has the administration dies ; or

(b.) When a committee of the estate of that person is appointed under the provisions of this Act ; or

(c.) When an administrator of the estate of that person (being a person confined under Part IV of this Act) is appointed under Part III of the Prisons Act, 1908 ; or

(d.) When that person is discharged under this Act, and it appears from the notice of discharge that he is able to manage his own affairs. **ADD hereto (e)**

AMENDED: VIDE INSET

89. (1.) The Supreme Court may, on petition by the Public Trustee or any other person, appoint the Public Trustee or any other person or persons as the committee of the estate of any patient.

Public Trustee may be appointed committee of estate.

(2.) Any committee so appointed shall have the same powers, duties, and functions as if he had been appointed after inquisition by the Supreme Court in accordance with the provisions in that behalf hereinafter contained.

(3.) Any committee appointed in pursuance of this section shall continue in office until the person of whose estate he is committee dies, or the order appointing him as such committee is rescinded by the Supreme Court, notwithstanding the fact that the said person is no longer a patient within the meaning of this Act.

(4.) The Supreme Court may at any time, on the petition of the person of whose estate a committee has been so appointed, or of the committee, or of any other person, rescind the order appointing the committee on proof that such person is of sufficient ability to manage his own affairs, and that he is no longer a patient within the meaning of this Act.

(5.) The Supreme Court may at any time, on the petition of the person of whose estate a committee has been so appointed, or of the

committee, or of any other person, and on proof that there is good cause for so doing, make an order appointing any other person or persons as the committee of the said estate in lieu of the committee so appointed.

90. (1.) The Supreme Court may, on the petition of the Public Trustee or of any other person, order an inquisition to be held as to whether any person alleged to be mentally defective, either in or out of New Zealand, is mentally defective and incapable of managing his affairs.

(2.) If the person so alleged to be mentally defective is in New Zealand, he shall have notice of the presentation of the petition.

(3.) The inquisition shall be held in accordance with the order of the Court either by a Judge of the Supreme Court or by a Magistrate.

(4.) No such inquisition shall be held or taken before a jury.

(5.) If the person so alleged to be mentally defective is in New Zealand, the Judge or Magistrate holding the inquisition shall personally examine that person touching his state of mind and his ability to manage his affairs, and for this purpose the said Judge or Magistrate may make an order directing that person to attend before him at any time and place for examination, or directing any person having the custody of that person to bring him before the said Judge or Magistrate for examination at any time or place.

(6.) A Magistrate holding any such inquisition shall, while so employed, have all the powers, authorities, and discretion of a Judge of the Supreme Court.

91. The inquisition shall be confined to the question whether or not the person alleged to be mentally defective is mentally defective and is incapable of managing his affairs; and no evidence as to anything done or said by him, or as to his demeanour or state of mind, at any time being more than two years before the time of the inquisition shall be receivable in proof of mental defect, unless the Judge or Magistrate holding the inquisition otherwise directs.

92. (1.) If the Judge or Magistrate holding the inquisition finds that the person so alleged to be mentally defective is mentally defective and is incapable of managing his affairs, the said Judge or Magistrate shall certify his finding to the Supreme Court.

(2.) Any person so found to be mentally defective shall be deemed to be a person found lunatic on inquisition within the meaning of any Act or law relating to such lunatics.

93. If any person is so found to be mentally defective and to be incapable of managing his affairs, the Supreme Court may appoint the Public Trustee or any other person or persons whom it thinks fit to be the committee of the estate of that person.

94. The Supreme Court may at any time appoint any other person or persons to be the committee of the estate of any person so found to be mentally defective, in lieu of any committee already appointed.

95. (1.) Where, on any inquiry under section five hereof or any inquisition under this Part of this Act, it appears that a person alleged to be mentally defective is incapable of managing his affairs, but does not require oversight, care, or control with respect to himself, it may be specially so found and certified.

Inquisition as to state of mind of person alleged to be mentally defective.

Scope of inquisition.

Certificate to Supreme Court when person found mentally defective on inquisition.

Supreme Court to appoint committee.

Supreme Court may at any time appoint new committee.

Provision for commitment or estate only.

(2.) Every such special finding and certificate shall be brought before a Judge of the Supreme Court, who shall thereupon make all such orders and direct all such acts to be done as may be necessary or proper relative to the commitment, management, and application of the estate and effects of the person to whom the finding and certificate relate.

96. (1.) When any person has been found to be mentally defective as aforesaid, the Supreme Court may at any time thereafter, on the petition of that person or of the committee of his estate or of any other person, and on proof that the person so found mentally defective is no longer a patient within the meaning of this Act, direct an inquisition to be held as to whether that person is still incapable of managing his affairs.

Inquisition as to continuance of mental defect, and rescission of order appointing committee when person found capable of managing his own affairs.

(2.) Every such inquisition shall be held in the same manner, with all necessary modifications, as an inquisition under the provisions hereinbefore contained.

(3.) The Judge or Magistrate holding such inquisition shall certify his finding thereon to the Supreme Court, and if he certifies that such person is no longer incapable of managing his affairs, the Supreme Court may rescind the order appointing a committee of his estate, and the former inquisition shall thereupon be deemed to be superseded.

(4.) Save as in this section provided, no proceedings shall hereafter be taken by way of the traverse or *supersedeas* of any inquisition.

97. (1.) When it is proved to the satisfaction of the Supreme Court that any person is lawfully detained as a lunatic or person otherwise mentally defective in any place outside New Zealand, or that any person resident in any place outside New Zealand has been found lunatic or otherwise mentally defective in any inquisition or other inquiry held by or by the authority of any Court having jurisdiction to appoint, in the place where that person so resides, a committee or other administrator of the estate of that person in New Zealand, it shall be lawful for the said Supreme Court, on the petition of the Public Trustee or of any other person, to appoint the Public Trustee or any other person or persons to be the committee of the estate of the person so detained as a lunatic or otherwise mentally defective person or so found lunatic or otherwise mentally defective.

Committee in case of person outside New Zealand

(2.) Any person so appointed shall have the same powers, duties, functions, and liabilities as if he had been appointed after inquisition held in accordance with the provisions hereinbefore contained.

(3.) Any order appointing a committee in pursuance of this section may be rescinded in the same manner as is hereinbefore provided with respect to an order appointing a committee of the estate of a mentally defective person so found by inquisition.

(4.) The Supreme Court may at any time make an order appointing the Public Trustee or any other person or persons to be the committee of the estate of any person in lieu of any committee appointed in pursuance of this section.

98. The Supreme Court may order the costs, charges, and expenses of the presentation of any petition for an inquisition under this Act, and of the execution of such inquisition, and of any proceedings consequent on any such inquisition, and of any application for the appointment of a committee, to be paid either by the party or parties

Court to make order as to payment of costs of inquisition.

presenting the petition or making such application, or by the party or parties opposing the same, or out of the estate of the person in respect of whom the inquisition is held or sought or application made, or partly in one way and partly in another, as the said Court in each case thinks proper.

Powers of Public Trustee.

Property not to
vest in Public
Trustee when
acting as committee.
or administrator.

99. When the Public Trustee is appointed as the committee of the estate of a mentally defective person, or becomes authorized by this Act to administer that estate, the estate shall not thereby become vested in the Public Trustee, but he shall be entitled to the possession and management of the same in accordance with the provisions hereinafter contained.

Powers of Public
Trustee so acting.

100. The Public Trustee, being appointed as the committee of the estate of any mentally defective person, or being authorized by this Act to administer that estate, may, without the leave of the Supreme Court, but subject to any order of the said Court to the contrary, do any of the following things:—

- (a.) Take possession of all the property of that person :
- (b.) Sell any property of that person, other than freehold or leasehold property, either by public auction or private contract, and subject to such conditions as the Public Trustee thinks fit :
- (c.) Lease or concur in leasing any property of that person for any term not exceeding two years (to take effect in possession within six months of the date of the lease), or from year to year, or for a weekly, monthly, or other like tenancy, or at will :
- (d.) Repair, and insure against fire or accident, any property of that person :
- (e.) Pay all rates, taxes, insurance premiums, or other outgoings payable in respect of the property of that person, or under any policy of insurance of any kind :
- (f.) Surrender any policy of life assurance :
- (g.) Grant powers of attorney to any person in or out of New Zealand to do any act or thing with respect to the property of such mentally defective person which the Public Trustee can do as committee of the estate of that person, or as authorized to administer that estate :
- (h.) Institute or defend, in his own corporate name or in the name of the mentally defective person, any action, suit, or other proceeding concerning the property of that person, and suffer judgment to go by default, or consent to any judgment, decree, or order in the action, suit, or proceeding, upon such terms as the Public Trustee thinks fit :
- (i.) Compromise any claims or demands made against that person or his estate, upon such terms as the Public Trustee thinks fit, and upon such evidence as he deems sufficient, and submit such claims or demands to arbitration, and do all acts and things necessary to render any such compromise or arbitration effectual :
- (j.) Take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company indebted to such mentally defective person, and vote and act either

personally or by proxy at all meetings of creditors, and in all other matters relating to the bankruptcy or liquidation :

- (k.) Take criminal proceedings concerning the property of that person :
- (l.) Demand, receive, and recover all moneys payable or belonging to that person :
- (m.) Apply moneys belonging to that person, whether arising from real or personal property, and whether income or capital, in or towards the payment of any debt, obligation, or liabilities of that person, or incurred by the Public Trustee in exercise of the powers vested in him by this Act :
- (n.) Surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to that person :
- (o.) Surrender or concur in surrendering any lease, and accept a new lease :
- (p.) Accept a surrender of any lease :
- (q.) Carry out and perform contracts entered into by that person before the Public Trustee was appointed as the committee of his estate or became authorized to administer it :
- (r.) Apply, in his discretion, and in such manner and to such extent as he thinks fit, any moneys belonging to that person, whether arising from real or personal property, and whether income or capital, for the maintenance of that person, or of the husband or wife of that person, or for the maintenance, education, or advancement of the children or grandchildren of that person. **ADD hereto** (S) - (S)

AMENDED: VIDE INSET

101. The Public Trustee, being appointed as the committee of the estate of a mentally defective person, or being authorized by this Act to administer that estate, may, with the sanction of an order of the Supreme Court, do any of the following things :—

Certain powers exercisable with sanction of Court.

- (a.) Sell any freehold or leasehold property of that person by public auction or private contract in such manner and on such terms and conditions as the Public Trustee thinks fit :
- (b.) Grant or concur in granting leases of any property of that person for such terms and on such covenants and conditions as the Public Trustee thinks fit :
- (c.) Make exchange or partition of any property belonging to that person, and give or receive any money for equality of exchange or partition :
- (d.) Carry on any trade or business of that person :
- (e.) Expend money in the improvement of any property of that person, by way of building or otherwise :
- (f.) Execute any power of leasing vested in any such person having a limited estate only in the property over which the power extends :
- (g.) Exercise any power, or give any consent required for the exercise of any power, where the power is vested in that person for his own benefit or the power of consent is in the nature of a beneficial interest in that person :
- (h.) Expend any moneys belonging to that person in the maintenance, education, or advancement of the husband or wife

of that person, or of any relative of that person, or of any person wholly or partially dependent on that person, or continue such other acts of bounty or charity exercised or promised to be exercised by that person as the Court, having regard to the circumstances and the amount or value of the estate of that person, considers proper and reasonable. ADD hereto (17)

AMENDED: VIDE INSET

Public Trustee may, with sanction of Court, execute mortgages for certain purposes.

102. The Public Trustee, being appointed as the committee of the estate of a mentally defective person, or being authorized to administer that estate, may, with the sanction of an order of the Supreme Court, mortgage or charge (with or without a power of sale, and on such terms as the Public Trustee thinks fit) any property of that person 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.) The payment of the debts or engagements of the mentally defective person:
- (b.) The discharge of any incumbrance on his property:
- (c.) The payment of any debt or expenditure incurred for the maintenance of that person or for that of his family, or otherwise for his benefit:
- (d.) The payment of or provision for the expenses of the future maintenance of that person or his family:
- (e.) The improvement or protection of the property of that person:
- (f.) The payment of any debts or liabilities incurred by the Public Trustee in the exercise of the powers conferred upon him by this Act in respect of the administration of the property of that person.

AMENDED: VIDE INSET

Exercise of powers without sanction of Court where estate of less value than £500.

103. (1.) If the Public Trustee files in the office of the Supreme Court at Wellington, a certificate under his hand and corporate seal that after due inquiry he believes that the value of the estate of any mentally defective person of which he is the committee, or which he is authorized by this Act to administer, does not exceed the sum of five hundred pounds, after deducting all debts and liabilities payable thereout, the Public Trustee may thereafter exercise in respect of that estate, without the sanction of an order of the Supreme Court, any of the powers conferred upon him by the two last preceding sections.

Ibid

(2.) If at any time after the filing of such a certificate the Public Trustee has reason to believe that the value of the estate, after making such deductions as aforesaid, exceeds the sum of five hundred pounds, he shall not thereafter exercise any of the said powers without the leave of the Supreme Court; but nothing in this subsection shall so operate as to invalidate anything done by the Public Trustee in pursuance of the last preceding subsection.

Ibid

Public Trustee may, under order of Court, exercise powers or give consent on behalf of mentally defective person.

104. When a power is vested in any mentally defective person in the character of trustee or guardian, or the consent of any such 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 Supreme Court to be expedient that the power should be exercised or the consent given, the Public Trustee, being appointed as the committee of the estate of that person or authorized by this Act to administer that estate, may, in the name and on behalf of the mentally defective person, and

under an order of the said Court made upon the application of any person interested, exercise the power or give the consent in such manner as the order directs.

105. The Public Trustee may, in the name and on behalf of any mentally defective person, execute and do all such assurances and things as the Public Trustee may deem necessary for effectuating any of the powers conferred upon him by this Act or by any order of the Supreme Court; and all assurances and things so executed or done shall have the same force and effect as if executed or done by the mentally defective person had he not been mentally defective.

Public Trustee may execute assurance on behalf of such person.

106. In the exercise of any of the powers conferred by this Act upon the Public Trustee he shall be subject to any orders that may be made in the matter by the Supreme Court.

Public Trustee to be subject to orders of Court.

107. A certificate under the hand of the Public Trustee, and sealed with his corporate seal, certifying that he has been appointed under this Act as the committee of the estate of any person, or that he is authorized under this Act to administer the estate of any person, and stating the date at which he was so appointed or became so authorized, and that such appointment or authority is still in force, shall, until the contrary is proved, be accepted by all Courts, officers, and other persons as sufficient evidence of the facts so certified and stated.

Certificate by Public Trustee of his appointment as committee, &c., to be received in evidence.

108. All capital moneys coming to the hands of the Public Trustee under the provisions of this Act shall form part of the common fund of the Public Trust Office, and shall be entitled to the guarantee which is afforded to that common fund.

Capital moneys to form part of common fund of Public Trust Office.

109. Every estate of which the Public Trustee is appointed the committee or which he is authorized by this Act to administer shall be deemed to be placed in the Public Trust Office, and to be administered under the Public Trust Office Act, 1908, and, subject to the provisions of this Act, all the provisions of the said Act shall, so far as applicable, extend and apply accordingly to that estate and to the administration thereof.

Provisions of Public Trust Office Act to apply to estates of mentally defective persons.

110. Section twenty-nine of the Public Trust Office Act, 1908, is hereby amended by omitting from subsection one thereof the words "or committee."

Section 29 of that Act amended.

111. (1.) No person of whose estate the Public Trustee or any other person has been appointed the committee, or whose estate the Public Trustee is by this Act authorized to administer, shall be capable, without the leave of the Supreme Court, of making any transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or of entering into any contract, except for necessities; and every such transfer, lease, mortgage, or other disposition, and every contract other than for necessities, shall be voidable by that person or by the Public Trustee or other committee on his behalf.

Limitation of contractual powers of person of whose estate a committee or administrator appointed.

(2.) The Supreme Court may by order give leave to any such person to make any transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or to enter into any contract, if the said Court is satisfied that such transfer, lease, mortgage, disposition, or contract is for the benefit of that person, and that he consents thereto with adequate understanding of the nature thereof.

(3.) Nothing in this section shall affect the law relating to the validity of wills or other testamentary dispositions.

(4.) Nothing in this section shall invalidate any transfer, lease, mortgage, disposition, or contract made or entered into by any such person if the other party thereto acted in good faith without knowledge that any committee had been so appointed or that the Public Trustee was so authorized to administer the estate.

Maintenance payable
out of estate.

112. (1.) All expenses incurred by the Public Trustee in respect of the maintenance of any mentally defective person, or the administration of his estate, shall be charged against and payable out of that estate; and, in addition, there shall be payable in respect of all moneys forming part of that estate, and coming under the control of the Public Trustee, the same commissions and other charges as are prescribed by regulations made under section sixty-two of the Public Trust Office Act, 1908, to be paid out of estates placed in the Public Trust Office.

(2.) The amount of all deductions for expenses, commissions, and other charges shall be paid to the Public Trust Office Expenses Account.

(3.) The expenses, commissions, and other charges aforesaid shall be payable out of the estate, although the mentally defective person dies or the estate otherwise ceases to be under the administration of the Public Trustee before payment thereof.

Public Trustee may
obtain information
on oath.

113. (1.) The Public Trustee shall have power, in the execution of his powers and duties under this Act, to summon persons before him, or before some person appointed in writing by him in that behalf, and the Public Trustee or the person so appointed shall have power to administer oaths and take evidence as to any matters relating to the estate and affairs of the person of whose estate the Public Trustee is committee or whose estate he is administering, and to require the production of books and documents relating to those matters.

(2.) Every person on whom any such summons is served by delivering it to him or by leaving it at his usual place of business or abode, who without reasonable justification or excuse fails to appear according to the exigency of the summons, or, being present, refuses to be sworn or to give evidence or to answer such questions as are put to him by the Public Trustee or the person so appointed as aforesaid, or to produce any books or documents required by the summons to be produced, is liable to a fine not exceeding fifty pounds:

Provided that no person so summoned shall be bound to appear according to the exigency of the summons if, in order to appear, he would have to travel more than two hundred miles by the usual way from his usual place of abode to the place where he is summoned to appear.

Public Trustee may
apply to Court for
directions.

114. Without restricting any other powers and authorities conferred by this Act, the Public Trustee may apply to the Court, *ex parte*, for directions with respect to the exercise of any of the powers, authorities, and discretions conferred upon him by this Act with respect to the estate of any mentally defective person, and the Court may, on such application, make such order in the premises as it thinks fit.

Committees other than the Public Trustee.

Supreme Court
may, on sufficient
reason given,
appoint committee

115. (1.) The Supreme Court shall not appoint any person other than the Public Trustee as the committee of the estate of any person in pursuance of this Act, unless it is proved to the satisfaction of the Court

that there is some sufficient reason why such person should be so appointed in preference to the Public Trustee. other than Public Trustee.

(2.) When any application is made to the Supreme Court to appoint any other person than the Public Trustee as the committee of the estate of any person, notice of the application shall be given to the Public Trustee by the person making the same. **ADD hereto** (3)

AMENDED: VIDE INSET

116. (1.) When any person other than the Public Trustee has been appointed as the committee of an estate under this Act, that person shall have in respect of the estate such of the powers conferred on the Public Trustee by sections ninety-nine to one hundred and four of this Act as the Supreme Court in the order appointing the committee, or in any subsequent order or orders, directs; and in the exercise of such powers he shall be subject to any orders that may be made in the matter by the Supreme Court.

Powers of such committee.

(2.) On the application of the Public Trustee or any relative of the mentally defective person, any such order may from time to time be varied or rescinded by the said Court.

117. (1.) No person other than the Public Trustee shall be appointed as the committee of the estate of any person in pursuance of this Act until he has given to the Public Trustee such security as the Supreme Court directs and approves for the due administration of the estate.

Person so appointed to give security to Public Trustee.

(2.) Such security may be a bond, with or without a surety or sureties, or such other security as the said Court directs and approves.

(3.) The said Court may at any time, on the application of the Public Trustee, require such committee to give to the Public Trustee further or other security for the due administration of the estate.

(4.) The Court may at any time give leave to the Public Trustee to enforce any such security, and the Public Trustee shall thereupon proceed by action or otherwise to enforce the same accordingly. All moneys so received by the Public Trustee shall be deemed part of the estate of which such person is or was the committee, and all costs and expenses so incurred by the Public Trustee shall be paid out of the said estate. **ADD hereto** (5)

AMENDED: VIDE INSET

118. (1.) It shall be the duty of every person, other than the Public Trustee, who has been appointed the committee of the estate of any person in pursuance of this Act to render to the Public Trustee, at such times and in such form as he shall prescribe, a statement showing the property comprised in the estate, and the manner in which that property has been administered and applied, and the condition of that property, and such other particulars relating to the said estate as may be prescribed or directed by the Public Trustee.

Statement as to estate to be rendered to Public Trustee.

(2.) Every such statement shall be verified by the statutory declaration of the committee, and, where the Public Trustee so directs, shall be supported by vouchers.

(3.) If any committee fails or refuses to render any such statement, verified as aforesaid, in the manner and at the times so prescribed, he shall be liable to a fine not exceeding fifty pounds for every such offence.

(4.) The Public Trustee may cause any such statement or the accounts relating thereto to be examined and reported upon by any person he may appoint in that behalf.

119. (1.) When any person other than the Public Trustee is appointed the committee of any estate in pursuance of this Act, there shall be payable out of that estate by the committee thereof to the

Percentage of moneys in hands of committee to be paid to Public Trustee.

Public Trustee, at such times as the Public Trustee prescribes, such percentage, not exceeding one pound for every hundred pounds, as the Public Trustee from time to time determines, on all moneys collected by or coming under the control of the committee and forming part of the estate.

(2.) All moneys so paid to the Public Trustee shall form part of the Public Trustee's Account.

PART IX.

OFFENCES.

Illegal reception or detention of person mentally defective.

120. The Superintendent of any institution commits an indictable offence if he receives or detains in that institution, or permits to remain therein, any mentally defective person, except under the authority and in pursuance of this Act.

Reception or detention of greater number of persons than authorized by license.

121. The Superintendent of a licensed institution commits an indictable offence if he receives, detains, or suffers to remain in that institution a greater number of persons than he is authorized to receive or detain therein by the terms of the license.

Failure of occupier of private house to send notice of person being treated as mentally defective.

122. (1.) It shall be the duty of every occupier or inmate of any house or place, other than an institution, who, in consideration of any payment made or to be made by any person, permits to reside in that house or place any person whom, by the exercise of oversight, care, or control, he treats as mentally defective, to send notice thereof in writing to the Inspector-General within forty-eight hours after the time when he begins to permit that person so to reside.

(2.) It shall be the duty of every occupier or inmate of any house or place, other than an institution, who permits to reside therein or who has the care or charge therein of any person whom, by the exercise of oversight, care, or control, he treats as mentally defective, to send notice in writing of those facts to the Inspector-General within three months after the time when he begins to permit that person so to reside or begins so to have the care or charge of him. Nothing in this subsection shall limit or affect the provisions of the last preceding subsection.

(3.) Any person failing to send such notice as aforesaid within the time aforesaid is liable to a fine not exceeding one hundred pounds.

(4.) When any person with respect to whom any such notice has been given no longer requires oversight, care, or control, or ceases to be under the oversight, care, or control of the person who sent the notice, such last-mentioned person shall forthwith send notice to that effect to the Inspector-General.

(5.) In any prosecution for an offence against this section, if it is proved that the person so permitted to reside or so under the care or charge of the defendant is or was while so resident or under care mentally defective, the burden of proving that the defendant did not treat him as mentally defective, and of proving that such notice as aforesaid was duly sent to the Inspector-General, and of proving that no payment was made or was to be made in respect of the residence of that person, shall lie upon the defendant.

(6.) Nothing in this section shall apply to—

(a.) Any person under seven years of age; or to

(b.) Any single patient residing in a house in accordance with a reception-order; or to

(c.) Any person lawfully detained under this Act who is absent on leave or is lawfully in custody under the provisions of any Act.

(7.) It shall be a good defence in any prosecution for an offence against this section that, within the time hereinbefore limited for the sending of notice to the Inspector-General, the person so resident in any such house or place or so under care ceased to require oversight, care, or control, or ceased to be so resident or so under the care or charge of the defendant.

123. (1.) No householder, occupier, or inmate of any house or place, other than an institution, shall permit to reside in that house or place, or shall have under his care or charge therein, at one and the same time more than one person whom by the exercise of oversight, care, or control he treats as mentally defective.

Occupier not to receive more than one mentally defective person at one time.

(2.) Any person who commits a breach of the provisions of this section shall be liable to a fine not exceeding one hundred pounds.

(3.) For the purpose of this section a patient or boarder absent from an institution on leave shall not be deemed to be a mentally defective person so long as the conditions are complied with on which the leave was granted.

(4.) This section shall apply notwithstanding the fact that any person so residing in any house is detained therein as a single patient under the authority of a reception-order.

(5.) This section shall not apply to the residence in any house or place of two or more mentally defective persons if they are members of the same family, and if no payment is made to the occupier or to any other person in consideration of their residence or maintenance in that house or place.

(6.) This section shall not apply for a period of three months to the residence in any public hospital, or any special hospital not kept for gain, of more than one person who by the exercise of oversight, care, or control is treated as mentally defective, provided that within forty-eight hours of his becoming so resident a medical certificate is forwarded to the Inspector-General stating that in the opinion of the certifier the person to whom the certificate relates is mentally defective, but that the malady is not confirmed. The said period of three months may be extended by the Inspector-General for a further period of three months on receiving a like certificate. For the purposes of this subsection the person having charge of the hospital shall be deemed to be both the occupier of the hospital and also the person who has under his care or charge any person whom he treats as mentally defective.

(7.) In any prosecution under this section, if it is proved that any person resident in any house or place is mentally defective, the burden of proving that the defendant did not treat him as such shall lie upon the defendant.

124. The sending of any notice or certificate required by either of the two last preceding sections shall not in itself be held or taken to justify the detention of any person against his will.

Detention of person, when not justified.

125. Every medical practitioner who wilfully makes any false or misleading statement in any certificate under this Act, and every person who signs any certificate under this Act in which he describes himself as a medical practitioner, not being such within the meaning of this Act, commits an indictable offence.

False or misleading certificate by medical practitioner

Neglect or
ill treatment of
mentally defective
persons.

Carnal knowledge of
mentally defective
female.

Penalties.

126. Every Superintendent, licensee, officer, nurse, attendant, householder, or other person having the oversight, care, or control of any mentally defective person, or employed in any institution, house, or place in which any such mentally defective person resides, who strikes, wounds, or ill-treats, or wilfully neglects, any such mentally defective person is guilty of an indictable offence.

127. (1.) Every person is guilty of an indictable offence who has or attempts to have carnal knowledge of any female who is detained under the provisions of this Act, or is otherwise under oversight, care, or control as mentally defective.

(2.) For the purposes of this section any female shall be deemed to be detained in any institution, house, or other place, although absent on leave or otherwise therefrom or escaped therefrom, until she is duly discharged therefrom in due course of law, or ceases to be under oversight, care, or control as mentally defective.

(3.) It shall be a good defence in any prosecution for an offence against this section if the defendant proves that at the time of the act committed he did not know and had no reasonable cause to believe or suspect that the female was so detained or was under oversight, care, or control as mentally defective.

(4.) The consent of the female shall not be a defence in any prosecution for such offence.

128. (1.) Every person who is guilty of any act or omission in breach of this Act which is not declared to be an indictable offence, and for which no other penalty is expressly provided, is liable on summary conviction before a Magistrate to a fine not exceeding twenty pounds.

(2.) Every person who is guilty of any act or omission in breach of this Act which is declared to be an indictable offence is liable on indictment to a fine not exceeding one hundred pounds, or to imprisonment, with or without hard labour, for any term not exceeding two years.

(3.) In any prosecution for an offence declared by this Act to be an indictable offence, if a Magistrate on the preliminary hearing of the charge considers that the offence is not of a grave nature, he may, with the consent of the person so charged, deal with him summarily, and inflict a fine not exceeding fifty pounds, or imprisonment, with or without hard labour, for any period not exceeding three months.

(4.) Every information for an offence punishable summarily under this Act shall be laid by the Inspector-General, or by some other person to be specially authorized by him in that behalf in the particular case by writing under his hand.

(5.) Every such information shall be heard and determined by a Magistrate sitting alone.

PART X.

MISCELLANEOUS.

129. No order shall be made under section nineteen hereof for the reception of a single patient in any house, and no license shall be granted under section forty-five hereof in respect of any institution, unless the Magistrate (in the first-mentioned case) or the Inspector-General (in the last-mentioned case) is satisfied that the sleeping-

Sleeping-
accommodation
in licensed
institutions.

accommodation to be set apart for the patient or patients in that house or institution is such as will admit of not less than six hundred cubic feet of measurement space for each patient occupying the same.

130. (1.) Any power conferred by this Act on a Magistrate to make a reception-order, or to do any other thing preliminary or incidental to the making or execution of a reception-order, may be exercised by any two Justices of the Peace, if at the time at which that power is so exercised there is no Magistrate within ten miles of the place where it is so exercised who is able to exercise the same.

Justices may act for Magistrate in certain cases.

(2.) A statement or recital in any reception-order made by two Justices of the Peace that to the best of their knowledge and belief there is at the time of the making of the order no Magistrate within ten miles of the place where it is made who is able to make it, or any statement or recital in the order to the same effect, shall be conclusive proof of the jurisdiction of the said Justices so far as the requirements of this section are concerned.

(3.) With respect to the exercise by Justices of the powers conferred by this section, all references in this Act to a Magistrate shall extend and apply to two Justices.

(4.) Any proceedings commenced before two Justices in accordance with this section may be continued and completed before a Magistrate.

131. (1.) A person who does any act in pursuance or intended pursuance of any of the provisions of this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of mistake of law or of fact, or on any other ground, if he has acted in good faith and with reasonable care.

No liability in respect of act done in good faith in pursuance of this Act.

(2.) In any proceedings taken against any such person for any such act the burden of proving that he acted without good faith or without reasonable care shall lie upon the plaintiff.

(3.) Any proceedings taken against any such person for any such act may, upon application to the Court in which they are taken, be stayed if the Court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious.

(4.) No such proceedings shall be commenced unless within six months after the act complained of, or, in the case of a continuance of injury or damage, during the continuance or within six months after the ceasing thereof:

Provided that, in estimating the said period of six months so limited for the commencement of proceedings, no account shall be taken of any time or times during which the person injured was in confinement, lawfully or unlawfully, as a mentally defective person, or was ignorant of the facts which constitute the cause of action, or during which the defendant was out of New Zealand.

(5.) Nothing in this section shall be so construed as to deprive any person of any defence which he would have independently of this section.

(6.) No proceedings shall be taken against any person on the ground merely that any mentally defective person was certified or detained as belonging to any one class instead of another class.

Instructions by telegram, when sufficient.

Notices to Inspector-General deemed to have been sent when posted.

Former references to lunatics deemed references to mentally defective persons.

Hospitals to make certain temporary provision if so required by Minister.

132. The receipt of a telegram from the Minister, or Inspector-General, or his Deputy, or from any Superintendent or Medical Officer, or from any Magistrate, stating that such telegram was despatched at the same time as or after the posting of any written instruction, notice, order, or other document under this Act, in terms sufficient for the proper identification of the same, shall upon the date of its receipt and within the seven days immediately following confer upon the person to whom the telegram is addressed the same authority as the receipt of such written instruction, notice, order, or other document in proper form.

133. When any document is required by this Act to be sent to the Inspector-General, it may be sent by post to the office of the Inspector-General at Wellington, and shall be deemed to have been sent to the Inspector-General at the time when it was so posted.

134. When any unrepealed Act contains any reference to a lunatic within the meaning of the Lunatics Act, 1908, that reference shall be read and construed as a reference to a mentally defective person within the meaning of this Act.

135. The Board or Trustees in whom is vested the management of any institution or separate institution under the Hospitals and Charitable Institutions Act, 1909, in respect of which subsidies are received under that Act out of the Consolidated Fund shall, when required so to do by notice in writing under the hand of the Minister, make such provision as the Minister thinks necessary for the temporary reception and care of persons in respect of whom applications for reception-orders are made under this Act, pending the medical examination of those persons, the hearing of those applications, and the removal of those persons to the institution, house, or other place in which by any reception-order they are ordered to be received.

136. (1.) The cost of the maintenance of any person (other than a person detained under Part IV of this Act) detained as mentally defective in any public institution shall be a debt due to the Crown for which the following persons shall be jointly and severally liable :—

- (a.) The person so detained ;
- (b.) The husband of that person ;
- (c.) The father of that person if and so long as that person is under the age of twenty-one years.

(2.) The said cost of maintenance shall be such weekly sum, not exceeding twenty-one shillings a week, as the Inspector-General from time to time determines either generally or in the particular case, and either before or after the cost has been incurred.

(3.) When any person detained as aforesaid is allowed to be absent from the institution on leave, all sums expended by the Crown in respect of his maintenance, care, and control during the period of his absence on leave (not exceeding twenty-one shillings a week) shall be recoverable in the same manner as the cost of his maintenance while detained in the institution.

(4.) When any person detained as aforesaid dies, the funeral expenses incurred in respect of that person by the Crown shall be recoverable in the same manner as the cost of his maintenance in the institution.

(5.) All moneys payable for the maintenance of any person under this section shall accrue due from week to week, and may be recovered

REFER: S. 38 1918 No. 24.
Maintenance of mentally defective persons.

Refer 1931 ~~Inst.~~

REFER TO ACT, 1918
No. 24 Section 38

Ibid

on behalf of the Crown in a Magistrate's Court or in any other Court of competent jurisdiction by action at the suit of the Inspector-General, or of any other person authorized by him in writing in that behalf, and shall be payable to any person so entitled to sue for the same.

(6.) When two or more persons are jointly and severally liable under this section for the same sum, they shall be entitled as against each other to such indemnity or contribution as a Magistrate's Court or any other Court of competent jurisdiction thinks just in the circumstances of the case.

(7.) Nothing in this section shall take away or restrict the liability of any person for the maintenance of any other person under the Destitute Persons Act, 1910, or the power of a Magistrate to make any order under that Act in respect of the maintenance of any person.

(8.) When an order is made or proposed to be made by a Magistrate or by Justices or by the Inspector-General for the reception of any mentally defective person into a public institution, the Inspector-General, or the Magistrate or Justices by whom the order is made or proposed to be made, may then or at any subsequent time make an agreement with any relative of the mentally defective person that such relative will pay a fixed sum towards the maintenance of the mentally defective person while detained as mentally defective in any public institution, and any sum so agreed to be paid shall constitute a debt payable to the Crown and recoverable in accordance with the foregoing provisions of this section.

(9.) No such agreement shall take away or restrict any liability that would otherwise lie on the person making the same or on any other person in respect of the maintenance of the mentally defective person.

137. The Governor in Council, with the concurrence of the Judges of the Supreme Court, or any two of them, may from time to time make rules determining the fees to be charged and paid in any proceedings under Part VIII of this Act, and regulating the form and mode of proceeding in all matters under the said Part of this Act, and for carrying into effect the several objects of this Act, so far as the same relate to the judicial powers or duties of the Supreme Court or of any Magistrate acting in pursuance of Part VIII of this Act.

Governor in Council, with concurrence of Judges, to make rules as to fees in proceedings under Part VIII.

138. (1.) The Governor may from time to time, by Order in Council gazetted, make regulations for carrying into effect the purposes of this Act in all respects other than those provided for by the last preceding section, and for regulating the form and mode of proceeding in all cases other than as aforesaid under this Act, and prescribing the duties of the Public Trustee in connection with the management of the estates of mentally defective persons, and prescribing such forms as may be found necessary or convenient.

Regulations.

(2.) When any forms are provided by regulations under this Act, forms to the like effect may be used and shall be sufficient.

139. (1.) The Lunatics Act, 1908, and sections four hundred and thirty-six to four hundred and forty-one of the Crimes Act, 1908, are hereby repealed.

Repeal

(2.) All appointments made or deemed to have been made under the Lunatics Act, 1908, shall, subject to any other provisions of this Act, be deemed to have been made under this Act.

Savings.

(3.) All orders made by a Magistrate or by Justices for the reception and detention of any person as a lunatic under the Lunatics Act, 1908,

or under any Act thereby repealed, shall be deemed to be reception-orders made under this Act in respect of mentally defective persons, and the provisions of this Act shall apply thereto and to all persons detained thereunder accordingly.

(4.) All persons in confinement at the commencement of this Act under the provisions of sections four hundred and thirty-seven to four hundred and forty-one of the Crimes Act, 1908, shall be deemed to have been confined under the provisions of Part IV of this Act, and this Act shall apply to those persons accordingly.

(5.) Any person found lunatic by inquisition under the Lunatics Act, 1908, shall be deemed to have been found to be mentally defective by inquisition under this Act, and the provisions of this Act shall apply to that person accordingly.

(6.) The Public Trustee or any other person, being appointed the committee of the estate of any person under the Lunatics Act, 1908, and the Public Trustee, being authorized to administer the estate of any person under that Act, shall be deemed to have been so appointed or authorized under this Act, and shall have the same powers, duties, and liabilities as if he had been so appointed or authorized; and all the provisions of this Act shall apply to his administration of the said estate accordingly.

(7.) Every committee of the person of any lunatic appointed under the Lunatics Act, 1908, shall continue to have the same powers, duties, and liabilities as if this Act had not been passed, and the provisions of the Lunatics Act, 1908, shall continue to apply to that committee accordingly.

(8.) Every person (other than the Public Trustee) who has been appointed as a guardian or receiver of the estate of any lunatic under the Lunatics Act, 1908, or has been authorized by or in pursuance of that Act to administer or manage that estate otherwise than as the committee thereof, shall, until it is otherwise ordered by the Supreme Court, continue to have the same powers, duties, and liabilities in respect thereof as if this Act had not been passed, and the provisions of the Lunatics Act, 1908, shall continue to apply to any person so appointed or authorized accordingly.

(9.) All judicial proceedings which have been begun before the commencement of this Act for obtaining any order for the reception or detention of any person alleged to be a lunatic, or for any other purpose provided for in the Lunatics Act, 1908, may be continued and completed in the same manner as if this Act had not been passed, and every order made or thing done in those proceedings shall have the same effect as if made or done before the commencement of this Act.

(10.) Every order for the payment of money made under section thirty-four of the Lunatics Act, 1908, shall be deemed to be a maintenance order made by a Magistrate under the Destitute Persons Act, 1910, and the provisions of that Act shall apply accordingly.