



ANALYSIS

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1953, No. 1—*Private*

AN ACT to vary certain charitable trusts established by David Rough, Ellen Edgar, Thomas Francis Clemow, and Eliza Potter. Title.  
[23 September 1953]

WHEREAS by deed bearing date the twenty-seventh day of January, eighteen hundred and ninety-nine, David Rough, of Bournemouth, England, did transfer and make over for ever to the Hospital and Charitable Aid Board of the District of Auckland the sum of five hundred pounds upon trust to be administered by the said Board in accordance with the provisions of the Hospital and Charitable Institutions Act 1885 and the amendments thereof as a permanent fund or endowment for the relief of indigent persons suffering from incurable diseases in the City and District of Auckland, with power at discretion to pay the said sum towards a permanent enlargement of any institution established for the relief of such persons but not for the relief of the ordinary poor or paupers, and with power to the said Board to expend the said sum in the erection of a special ward in Preamble.

the Auckland Hospital or of a separate building connected therewith to be especially devoted to the relief of such indigent and incurably diseased persons as aforesaid: And whereas the sum of six hundred pounds paid by way of Government subsidy was added to the said sum of five hundred pounds, making a total sum of one thousand one hundred pounds: And whereas the moneys subject to the said trust through accumulations of income amounted on the thirty-first day of March, nineteen hundred and fifty-two, to the sum of seven thousand three hundred and twelve pounds and sixpence and is held by the Auckland Hospital Board (formerly called the Auckland Hospital and Charitable Aid Board): And whereas Ellen Edgar, late of Mount Eden, near Auckland, in New Zealand, widow, deceased, by her last will and testament dated the twenty-first day of September, nineteen hundred and thirty-nine, probate whereof and one codicil thereto was granted by the Supreme Court of New Zealand at Auckland to the executor and trustee therein named on the twenty-fourth day of September, nineteen hundred and forty-seven, gave a one-fourth share in the residue of her real and personal estate to the Auckland Infirmary situate at One Tree Hill: And whereas the said one-fourth share amounting to the sum of one thousand and thirty-seven pounds and sixpence was paid to the Auckland Hospital Board, being the authority in control of the said Auckland Infirmary: And whereas the amount held by the said Board to the credit of the Ellen Edgar Trust Fund on the thirty-first day of March, nineteen hundred and fifty-two, was one thousand and eighty-eight pounds fourteen shillings and eightpence: And whereas Thomas Francis Clemow, late of Auckland, in New Zealand, retired farmer, deceased, by his last will and testament dated the fourteenth day of June, nineteen hundred and forty, probate whereof and one codicil thereto was granted by the Supreme Court of New Zealand at Auckland to the executor and trustee therein named on the twenty-first day of October, nineteen hundred and forty-seven, gave a one-third share in the residue of his real and personal estate to the Auckland Infirmary (commonly called the Old Men's Home) and directed that the receipt of the Auckland Hospital Board for the same should be a sufficient discharge to the said

executor and trustee: And whereas the said one-third share of residue amounting to the sum of two thousand four hundred and eight pounds six shillings and ninepence was paid to the said Board: And whereas the amount held by the said Board to the credit of the Thomas Francis Clemow Trust Fund on the thirty-first day of March, nineteen hundred and fifty-two, was two thousand five hundred and forty-four pounds five shillings and sevenpence: And whereas Eliza Potter, the wife of William Potter, of the City of Auckland, coachbuilder, deceased, by her last will and testament dated the twenty-sixth day of March, nineteen hundred and six, probate whereof and one codicil thereto was granted by the Supreme Court of New Zealand at Auckland to Frederick Seymour Potter, the executor and trustee therein named, on the first day of February, nineteen hundred and eighteen, directed that upon the determination of certain prior trusts mentioned in the said will the residue of her estate should be held upon trust for the Auckland Hospital and Charitable Aid Board or other body corporate or trustees having the control or management of the Auckland Hospital to be applied by the said Board, body corporate, or trustees for the benefit of indigent sick persons who may from time to time become inmates of that hospital: And whereas the said Frederick Seymour Potter died at Auckland on or about the twenty-ninth day of March, nineteen hundred and forty-one, and probate of his last will and testament bearing date the ninth day of October, nineteen hundred and thirty-nine, was granted to William Wallace, land valuer, and Mary Elizabeth Potter, widow, both of Auckland, out of the Supreme Court of New Zealand at Auckland on the twenty-eighth day of April, nineteen hundred and forty-one: And whereas by deed of appointment dated the twentieth day of August, nineteen hundred and forty-one, the said William Wallace and Mary Elizabeth Potter duly appointed Allan John Moody, solicitor, and Ernest Henry Wright, public accountant, both of Auckland, to be trustees of the will of the said Eliza Potter in the place and stead of the said Frederick Seymour Potter: And whereas the said prior trusts created by the said will of the said Eliza Potter determined on the ninth day of October, nineteen hundred and forty-eight: And whereas the said Allan John

Moody and Ernest Henry Wright are holding funds and securities (hereinafter together with interest accruing thereon referred to as the Eliza Potter Trust Estate) amounting on the thirty-first day of July, nineteen hundred and fifty-two, to the sum of thirty-seven thousand two hundred and sixty-three pounds fourteen shillings, and are desirous of paying and transferring the same to the Auckland Hospital Board (formerly called the Auckland Hospital and Charitable Aid Board) and of being discharged from the trusts of the said will of the said Eliza Potter: And whereas the application and administration of the foregoing trusts have become difficult or impracticable or inexpedient either by reason of changes in the nature of the institutions hereinbefore mentioned or by reason of hospital and other benefits provided by the Social Security Act 1938 and its amendments: And whereas for the purpose of giving effect to the charitable intentions of the donors of the funds affected by the said several trusts it is expedient that the said trusts be varied in the manner hereinafter appearing: And whereas it is uncertain whether such variation of the said trusts can be attained otherwise than by legislation:

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

Short Title.

1. This Act may be cited as the Auckland Hospital Board Trusts Empowering Act 1953.

Eliza Potter  
Trust Estate  
to be  
transferred to  
Auckland  
Hospital  
Board.

2. (1) The said Allan John Moody and Ernest Henry Wright are hereby authorized and directed to pay and transfer so soon as is practicable after the passing of this Act to the Auckland Hospital Board the Eliza Potter Trust Estate, subject, however, to deduction therefrom of all costs, charges, disbursements, and expenses of and incidental to the preparing, obtaining, and passing of this Act (including the costs as between solicitor and client of the said Allan John Moody and Ernest Henry Wright).

(2) The receipt of the Auckland Hospital Board for all such moneys, securities, and other assets aforesaid shall be a full and sufficient discharge to the said Allan John Moody and Ernest Henry Wright for the same, and the said Allan John Moody and Ernest Henry

Wright and their respective executors and administrators shall thereafter be released and forever discharged from the trusts of the will of the said Eliza Potter, deceased.

3. Notwithstanding anything to the contrary in the said deed of trust executed by the said David Rough or in the said wills of the said Ellen Edgar and Thomas Francis Clemow and Eliza Potter, the Auckland Hospital Board shall be empowered as from the date of the passing of this Act to apply the capital and income of the funds affected by the said several trusts for the relief of distress of aged persons within the district from time to time under the control of the said Board and so that the said Board shall have power in its absolute discretion and without being liable thereafter to see to the application thereof to pay or transfer the whole or any part of the capital of the said funds to any charitable institution or charitable organization within the district under the control of the said Board and having as its object the relief of distress from time to time of aged persons within that district.

Application of  
trust funds by  
Board.

4. The powers and authorities vested in the Auckland Hospital Board by this Act in relation to the said several trusts shall be in addition to and not in substitution for the powers and authorities vested in the said Board by virtue of the said deed of trust and the said wills and by virtue of the Hospitals Act 1926 or any Act passed in amendment or substitution thereof.

Saving.

5. This Act is hereby declared to be a private Act.

Private Act.

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