



ANALYSIS

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| <p>Title.
Preamble.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Appropriation and distribution of part of estate. 3. Details of payments. 4. Administration of balance of residuary trust funds. | <ol style="list-style-type: none"> 5. Revocation of certain discretions of the Public Trustee regarding cesser of interest. 6. Forfeiture on bankruptcy, assignment, &c., and discretion of Public Trustee to apply share of income. 7. Validity of bequests to John Fuller Board of Trustees confirmed. 8. Barring claims. 9. Private Act. |
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1951, No. 6—*Private*

Title. AN ACT to remove doubts concerning the last will of John Fuller and to vary and declare the several interests taken under the said will and for other purposes.

[1 December 1951

Preamble. WHEREAS John Fuller, of Auckland, theatrical proprietor (hereinafter referred to as the testator), duly made and executed his last will and testament bearing date the twenty-seventh day of August, nineteen hundred and twenty-two (and a codicil thereto bearing date the nineteenth day of January, nineteen hundred and twenty-three), and appointed the Public Trustee the executor and trustee thereof, and his sons John Fuller and Sir Benjamin John Fuller, both of Sydney, theatrical proprietors, or the survivor of them, to be his advisory trustees and trustee to act with his trustee in the administration of the trusts of the said will pursuant to the provisions of section four of the Public Trust Office

Amendment Act 1913 or any Act passed in amendment thereof or substitution therefor: And whereas the testator died on or about the ninth day of May, nineteen hundred and twenty-three, without having altered his will or codicil: And whereas probate of the said will and codicil was granted by the Supreme Court of New Zealand at Wellington on the twenty-third day of May, nineteen hundred and twenty-three, to the Public Trustee: And whereas in and by the said will and codicil thereto the testator, after making a certain devise and certain bequests all of which have been duly satisfied and paid by the trustee, gave, devised, and bequeathed all his property both real and personal not previously otherwise disposed of in the said will unto the Public Trustee upon the trusts as set out in the said will: And whereas in the events which have happened the trusts of the said will which are still subsisting are as set out hereunder, namely: to divide the income arising from the residuary trust funds as defined in the said will into four equal parts, and to pay one of such parts to each of his four children May Emily Victoria Grubb, Harriet Annie Shelenhamer, Lydia Boddam, and Raymond Gerald Fuller during their respective lives, and directed that upon the death of any of his said children the Public Trustee should stand possessed of the share of income to which such child was entitled upon trust to apply the same in and for the maintenance, advancement, education, and benefit of such of them the child or children of such deceased child as should survive him and should from time to time be living, in such manner and in such sum as the Public Trustee should in his discretion think fit, and without limiting the discretion of the Public Trustee the testator declared his intention to be that such grandchildren should receive the benefit of the said income as far as possible in equal shares during their respective lives, with survivorship as between them, with power to pay direct to any grandchild his or her share, in the case of females upon attaining the age of twenty-one years and in the case of males upon attaining the age of twenty-five years, subject to certain provisions therein-after appearing, and directed that any surplus income remaining after the execution of the said trusts should fall into and form part of the residuary trust funds thereinafter in the said will directed to be held for the John

Fuller Board of Trustees to be constituted as in the said will provided upon the trusts as in the said will set out, and further declared that should any of the said beneficiaries during his or her life become bankrupt or assign or charge his or her share of the said income or any part thereof or do or suffer something whereby such share or any part thereof if belonging absolutely to such beneficiary would become vested in or payable to some other person, whichever should first happen, such beneficiary should immediately forfeit all interest whatsoever in the estate, and that the Public Trustee should stand possessed of the share of such beneficiary upon the same trusts as if such beneficiary were then dead, and further expressly declared that notwithstanding anything thereinbefore in the said will contained the Public Trustee should have an absolute right to cease and determine payment of the share of income of any beneficiary under the said will and codicil other than the said John Fuller Board of Trustees if and when in the opinion of the Public Trustee any such beneficiary should so misconduct or misbehave himself or herself that the Public Trustee should consider him or her undeserving of further payments, and that the decision or decisions of the Public Trustee on all matters arising under that provision should be binding on all persons beneficially interested under his said will and codicil, and directed that, subject to the provisions thereinbefore in the said will contained, the Public Trustee should stand possessed of the residuary trust funds upon trust to pay the income arising therefrom to the said the John Fuller Board of Trustees to be held by the said Board upon trust to apply the same in such manner as the said Board should consider advisable for the benefit of any orphanages in or about the City of Auckland in such manner and in all respects as the said Board should consider advisable, and directed the manner in which the said Board should be constituted, and that the said Board should be constituted as soon as any income from the residuary trust funds should be available for distribution by the said Board, and expressed the wish that the character of the Board should be of an unsectarian and undenominational nature: And whereas the testator at his death left him surviving his widow Emily Matilda Fuller and the following children, Sir Benjamin John Fuller, John Fuller, Lydia Boddam,

Harriet Annie Shelenhamer (usually known as Harriet Annie Hamer), May Emily Victoria Grubb, Walter Fuller, and Raymond Gerald Fuller, all of whom were entitled to benefit and were the only persons entitled to benefit in the event of the testator having died intestate as to any part of his estate: And whereas the widow the said Emily Matilda Fuller died on or about the first day of September, nineteen hundred and thirty-two, and two of the testator's said sons, namely the said Walter Fuller and Raymond Gerald Fuller, died respectively on or about the twelfth day of June, nineteen hundred and thirty-four, and on or about the second day of July, nineteen hundred and thirty-seven: And whereas probate of the will of the aforesaid Emily Matilda Fuller was granted to the Public Trustee on the sixteenth day of September, nineteen hundred and thirty-two, and by her said will the said Emily Matilda Fuller gave the whole of her estate to her two children the said May Emily Victoria Grubb and the said Raymond Gerald Fuller in equal shares: And whereas probate of the will of the aforesaid Walter Fuller, deceased, was granted to the Public Trustee on the third day of July, nineteen hundred and thirty-four, and the remaining assets in his estate are held by the Public Trustee upon trust for his two daughters Jean Margaret Skjellerup and June Gloria Cross in equal shares: And whereas probate of the will of the aforesaid Raymond Gerald Fuller, deceased, was granted to the Public Trustee on the twenty-eighth day of July, nineteen hundred and thirty-seven, and by his said will the said Raymond Gerald Fuller gave the whole of his estate to his widow Jessie Josephine Augusta Fuller: And whereas at the date of death of the testator his daughter the said Lydia Boddam was married and had had two children, namely two daughters Lila Marion Boddam and Gertrude Lilian Newman-Rogers (*née* Boddam), and no children have been born of the said Lydia Boddam after the death of the testator, and his daughter the said Harriet Annie Shelenhamer (or Hamer) was married and at the date of the death of the testator had had four children, namely Beatrice May Somers Edgar (*née* Hamer), Nancie Sarita Stuart (*née* Hamer), Joyce Anita Tilbury (*née* Hamer), and Geraldine Joan Shenton (*née* Hamer), and no children have been born of the said Harriet Annie Shelenhamer

(or Hamer) after the death of the testator, and his daughter the said May Emily Victoria Grubb was married and at the date of the death of the testator had had one child, namely Margaret Emily Sutherland (*née* Grubb), and two other children have been born of the said May Emily Victoria Grubb after the death of the testator, namely Geraldine Florence Grubb, who was born on the fifth day of November, nineteen hundred and twenty-three, and was therefore *en ventre sa mere* at the date of the death of the testator, and Barbara May Grubb, who was born on the eleventh day of November, nineteen hundred and twenty-eight, and his son the said Raymond Gerald Fuller was married and at the date of the death of the testator had had one child, namely Noel John Fuller, and after the death of the testator one further child was born to the said Raymond Gerald Fuller, namely Mione Josephine Campbell (*née* Fuller), who was born on the third day of July, nineteen hundred and thirty, and the aforesaid Noel John Fuller died on or about the sixteenth day of April, nineteen hundred and forty-five: And whereas from and after the death of the said Raymond Gerald Fuller the share of income to which he would have been entitled had he remained alive has been applied by the Public Trustee for the benefit of the said Noel John Fuller during his life, and since the death of the said Noel John Fuller no payment of any sort has been made out of the share of the income to which the said Raymond Gerald Fuller would have been entitled had he remained alive, but the balance of the said income amounting to three thousand eight hundred and thirty-two pounds nineteen shillings and sevenpence (hereinafter referred to as the suspense fund) is now held by the Public Trustee upon trust for the John Fuller Board of Trustees: And whereas all the just debts, funeral and testamentary expenses, and estate and other duties have been paid, and the executorship duties in connection with the estate of the testator have been duly completed: And whereas, apart from the aforesaid suspense fund, the capital of the residuary trust funds of the estate of the testator stood at sixty-two thousand six hundred and forty-one pounds eleven shillings and ninepence as at the thirtieth day of September, nineteen hundred and fifty-one, such amount being held in the Common Fund of the Public Trust Office, subject only to

the outstanding trusts of the said will and codicil as hereinbefore set forth: And whereas doubts have arisen concerning the validity of the bequests to the said grandchildren of the testator, and in particular whether any bequest to the said Barbara May Grubb and the said Mione Josephine Campbell was intended by the testator, and, if so intended, whether it was a valid bequest, and concerning the extent of the discretion of the Public Trustee in the distribution of the income among the grandchildren of the testator, and concerning the validity of the bequest which the testator purported to make to the John Fuller Board of Trustees, and concerning the destination of the moneys representing certain bequests and legacies which might be held to be invalid, and concerning other matters: And whereas in the events that have happened according to one construction of the will the Public Trustee on the thirtieth day of September, nineteen hundred and fifty-one, held in trust for the John Fuller Board of Trustees trust funds of the estate of the testator amounting to nineteen thousand four hundred and ninety-three pounds seven shillings and sixpence which were not subject to any prior interests: And whereas the Public Trustee on the twenty-second day of March, nineteen hundred and forty-eight, commenced an action by originating summons in the Supreme Court of New Zealand at Auckland for an order determining the said doubts and in such action cited as defendants all persons interested, including the unborn grandchildren of the testator, and cited also as a defendant the Attorney-General of New Zealand: And whereas the said John Fuller, a son of the testator, has renounced and disclaimed his interest as one of the next-of-kin for the benefit of the others of them: And whereas all parties to the said action who are of full age, other than the Public Trustee and the Attorney-General (being all the parties thereto other than the Public Trustee, the Attorney-General, and the grandchildren of the testator who may hereafter be born), are desirous of settling the said action on the terms hereinafter set forth and the Public Trustee and the Attorney-General consent to such proposed settlement: And whereas the Supreme Court by order made on the sixteenth day of November, nineteen hundred and fifty-one, approved of the proposed settlement on behalf of any such grandchildren and on

behalf of the charitable objects mentioned in the said will and codicil, but subject to the passing of this Act: And whereas the proposed settlement is not attainable 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 John Fuller Trust Act 1951.

Appropriation and distribution of part of estate.

2. Without further authority than this Act, the Public Trustee shall upon the passing of this Act set aside and appropriate from the capital of the residuary trust funds of the estate of the testator the sum of fifteen thousand six hundred and sixty pounds seven shillings and elevenpence (such sum being hereinafter referred to as the appropriated fund) and shall forthwith apply the appropriated fund and to the extent that such appropriated fund shall be insufficient for the purpose such part as shall be necessary of the suspense fund in making the payments set forth in the next succeeding section of this Act, and shall thereafter stand possessed of such part of the appropriated fund and of the suspense fund as shall then remain upon trust to invest the same (in the Common Fund of the Public Trust Office) and to pay the income to arise therefrom as from and including the first day of October, nineteen hundred and fifty-one, to the said Mione Josephine Campbell during her lifetime and from and after her death to the said John Fuller Board of Trustees to be held by such Board upon the trusts as set forth in the said will concerning moneys payable to the said Board.

Details of payments.

3. The payments referred to in the last preceding section are as follows:—

- (a) The sum of three thousand eight hundred pounds to the said Mione Josephine Campbell, of Auckland, married woman:
- (b) The sum of two thousand seven hundred and fifty pounds to the said May Emily Victoria Grubb, of Auckland, married woman:
- (c) The sum of two thousand seven hundred and fifty pounds to the said Jessie Josephine Augusta Fuller, of Auckland, widow:

- (d) The sum of two thousand pounds to the said Harriet Annie Shelenhamer, also known as Harriet Annie Hamer, of Dunedin, widow:
- (e) The sum of one thousand pounds to the said Lydia Boddam, of Lewes, Sussex, England, widow:
- (f) The sum of one thousand pounds to the said Sir Benjamin John Fuller, of Sydney, in the Commonwealth of Australia, theatrical proprietor:
- (g) The sum of five hundred pounds to the said Jean Margaret Skjellerup, of Christchurch, married woman:
- (h) The sum of five hundred pounds to the said June Gloria Cross, of Wollongong, New South Wales, Australia, married woman:
- (i) All costs, charges, and expenses incurred by the parties to the said originating summons of and incidental thereto and of and incidental to the promoting and passing of this Act:
- (j) All additional duty which may be payable as a result of the variation effected by this Act in the distribution of the said estate of the testator.

4. After making the appropriation directed in section two of this Act the Public Trustee shall hold the balance of the capital of the residuary trust funds in the estate of the testator upon trust as follows:—

Administration of balance of residuary trust funds.

- (a) To pay one-third of the income to arise therefrom as from the passing of this Act subject to the provisions of section six hereof to the said May Emily Victoria Grubb during her lifetime, and from and after her death to such of them her children (whether born before or after the death of the testator) as shall from time to time be living and if more than one in equal shares:—
- (b) To pay one-third of the income to arise therefrom as from the passing of this Act subject to the provisions of section six hereof to the said Harriet Annie Shelenhamer, also known as Harriet Annie Hamer, during her lifetime, and from and after her death to such of them

her children (whether born before or after the death of the testator) as shall from time to time be living, and if more than one in equal shares :

(c) To pay one-third of the income to arise therefrom as from the passing of this Act, subject to the provisions of section six hereof, to the said Lydia Boddam during her lifetime, and from and after her death to such of them her children (whether born before or after the death of the testator) as shall from time to time be living and if more than one in equal shares :

(d) Subject to the provisions of paragraphs (a), (b), and (c) of this section to pay the income to arise therefrom as from the passing of this Act to the John Fuller Board of Trustees to be held by such Board upon the trusts set out in the said will concerning moneys payable to the said Board.

Revocation of certain discretions of the Public Trustee regarding cesser of interest.

5. Notwithstanding anything to the contrary expressed or implied in the will and codicil of the testator, the Public Trustee shall have no discretionary power to cease or determine the payment of the share of income of any beneficiary under the said will.

Forfeiture on bankruptcy, assignment, &c., and discretion of Public Trustee to apply share of income.

6. If any daughter or grandchild of the testator shall during her or his lifetime become bankrupt or assign or charge the whole or any part of her or his share of the income arising from the residuary trust funds of the estate of the testator under the provisions of sections two or four of this Act or do or suffer something whereby such share or any part thereof if belonging absolutely to such daughter or grandchild, as the case may be, would become vested in or payable to some other person, whichever of these events shall first happen, such daughter or grandchild, as the case may be, shall immediately forfeit all interest whatsoever in and to the said income, and thereupon the Public Trustee shall during the lifetime of such daughter or grandchild, as the case may be, hold such share upon trust to apply the same for or towards the maintenance, education, support, or benefit of such daughter or grandchild, as the case may be, or of the husband, wife, and children of such daughter or grandchild, or of any one or

more of them to the exclusion of the others or other of them, and in such shares and proportions and generally in such manner in all respects as the Public Trustee shall in his absolute discretion think fit without being liable to account for the exercise of such discretion, and the Public Trustee shall stand possessed of any income not applied or appropriated for application pursuant to the discretionary power conferred by this section as at the thirty-first day of March in each year upon trust for the persons entitled under this Act as if such daughter or grandchild had died on the date of the event by which she or he forfeited her or his interest under the provisions of this section.

7. The trusts, powers, and provisions of the said will of the Testator in favour of the said John Fuller Board of Trustees are hereby confirmed and validated save and except so far as the same are varied by the foregoing provisions hereof.

Validity of bequests to John Fuller Board of Trustees confirmed.

8. This Act shall operate as a complete accord, discharge, and satisfaction of the claims of all parties cited in the said originating summons to any part or parts of the estate of the testator, whether under the said will and codicil or under intestacy.

Barring claims.

9. This Act is hereby declared to be a Private Act.

Private Act.