

## New Zealand.



### ANALYSIS

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### 1942, No. 1—*Private*

**Title.** AN ACT to vary the Terms of certain Trusts created by the Will of the late Mina Tait Horton, of Auckland, Spinster, by extending the Period within which certain Conditions attached to a Bequest for the Building Fund for the Cathedral of the Auckland Diocese of the Church of the Province of New Zealand (commonly called the Church of England) may be performed. [26th October, 1942

**Preamble.** WHEREAS Mina Tait Horton, late of Auckland, spinster, died on the third day of May, nineteen hundred and thirty-five, having made her last will and testament dated the twenty-third day of December, nineteen hundred and thirty-two, which said will was duly proved in the Supreme Court of New Zealand at Auckland on the seventeenth day of May, nineteen hundred and thirty-five: And whereas by her said will the said Mina Tait Horton, after providing for certain legacies and bequests, devised and bequeathed to Henry Horton

and the New Zealand Insurance Company, Limited, as trustees, the residue of her estate upon, *inter alia*, the following trusts:—

- (a) To divide the said residue into four equal shares and to set aside one of such shares and to pay the income arising therefrom to one Robert Chisholm Horton during his lifetime:
- (b) As to the remaining three of such equal shares, to stand possessed thereof and of any accumulated income therefrom upon trust for the building fund for the cathedral of the Auckland Diocese of the Church of the Province of New Zealand (commonly called the Church of England) to be paid to the General Trust Board of the said diocese or other the appropriate body controlling such building fund:

And whereas the said will further provides, *inter alia*, that the design for such building should be competitive, and that if such design should not be accepted by the General Trust Board within seven years from the date of the death of the said Mina Tait Horton, and if such building should not be commenced within ten years of her death, or if the said trustees should not be satisfied at the end of the said ten years that such building will be properly carried on to a completed state, then that the said devise and bequest for the said building fund should lapse and that the said three shares and accumulated income should then be held by the trustees upon the trusts following:—

- (i) A sum not exceeding one thousand pounds to be applied to the purchase of an oil painting to be presented to the City of Auckland:
- (ii) To the Trust Board of Saint Mary's Homes, the Diocesan Pension Board for the Number Three Fund (Clergy, Widows, and Orphans Fund), the Trust Board of the Orphan Home at Papatoetoe, and the Vestry of St. Aidan's Church, Remuera, the sum of one thousand pounds each:
- (iii) All the rest, residue, and remainder of the said three shares and accumulations therein for the Auckland University College Council, the Trust Board of the Diocesan High

School for Girls at Auckland, and to the board of governors for the time being of King's College at Auckland in equal shares, the sums so received by such bodies under this bequest to be in each case employed to establish a scholarship or scholarships to be called the Mina Tait Horton Scholarships:

And whereas the testatrix by her said will provided that the one-fourth share which she had directed should be set aside and the income therefrom paid to the said Robert Chisholm Horton during his lifetime should, from and after his death, follow the destination of the other three shares of her residuary estate in accordance with the provisions set forth in the will regarding such three shares: And whereas the said Robert Chisholm Horton did on the second day of March, nineteen hundred and forty-two assign and surrender such life interest to the said trustees: And whereas the said General Trust Board of the Diocese of Auckland has within seven years of the death of the said Mina Tait Horton accepted a competitive design for such cathedral: And whereas, in order that the said devise and bequest directed by the testatrix to be paid to the said General Trust Board of the Diocese of Auckland shall not lapse in accordance with the conditions of the will, the said cathedral building must be commenced within ten years from the third day of May, nineteen hundred and thirty-five, being the date of the death of the testatrix, and the trustees of the will must be satisfied within such ten years that the said building will be properly carried on to a completed state: And whereas the cost of completing the cathedral according to the design placed first was on the basis of charges for labour and material in New Zealand in December, nineteen hundred and thirty-eight, estimated at two hundred and fifty thousand pounds, and the cost of building a first portion of the design such as could be used for the time being as a cathedral was estimated at ninety thousand pounds: And whereas the estimated value of the said bequest for such Cathedral Building Fund, inclusive of the one-fourth share which was subject to a life interest as aforesaid, was as at the date of death of the testatrix less than sixty-eight thousand

pounds: And whereas the conditions resulting from the existence of a state of war since the third day of September, nineteen hundred and thirty-nine, have greatly increased the cost of building and have made it impracticable for the said General Trust Board to proceed either with the collection of subscriptions towards the Cathedral Building Fund or with the building of the said cathedral: And whereas similar conditions are likely to exist during the continuance of a state of war and for a considerable time after such state of war has ceased to exist: And whereas it is desired by the said General Trust Board to obtain a variation of the trusts created by the said will to provide that the bequest for such Cathedral Building Fund shall lapse if, but only if, the said cathedral building is not commenced within seven years from the date of the termination of the present war or if the trustees are not satisfied at the end of that period that the building will be properly carried on to a completed state and such variation 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:—

1. This Act may be cited as the *Mina Tait Horton Estate Act, 1942.* Short Title.
2. In this Act, if not inconsistent with the context,— Interpretation.
  - “ Testatrix ” means the said Mina Tait Horton, deceased:
  - “ Will ” means the said will of Mina Tait Horton:
  - “ Trustees ” means Sir Henry Horton, of Auckland, newspaper director, and the New Zealand Insurance Company, Limited, and the trustee or trustees for the time being lawfully acting as trustee or trustees in lieu of the said Sir Henry Horton and the New Zealand Insurance Company, Limited, or either of them:
  - “ Bequest ” means and includes so much of the estate of the testatrix, together with accumulated income therefrom as she gave, devised, and bequeathed to her trustees upon trust for the building fund for the cathedral of the Auckland Diocese of the Church of the

Province of New Zealand (commonly called the Church of England), including therein the devise of a reversionary interest in that one-fourth share of the residue of the estate which was subject to a life interest in favour of one Robert Chisholm Horton.

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3. (1) Notwithstanding anything to the contrary in the will, the bequest shall lapse if, but only if, the said cathedral building is not commenced within seven years from the date of the termination of the present war or if the trustees are not satisfied at the end of that period that the building will be properly carried on to a completed state.

(2) In the event of the lapse of the bequest in accordance with this section all reversionary rights suspended by the operation of this section shall thereupon be deemed to be revived.

Private Act.

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

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