

New Zealand.

ANALYSIS.

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| <p>Title.
Preamble.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Company may act as executor and obtain probate. 3. Court to act upon affidavit of director or manager in applications for probate. 4. Assets of company to be liable for proper administration of estates. 5. Company may be appointed trustee, receiver, or committee of estate under Acts relating to lunacy, bankruptcy, &c. 6. Company may act under power of attorney by manager and any director or by two directors. 7. Manager may attend on behalf of company, and shall be personally responsible to Court. 8. Company to be paid a commission on moneys received. 9. Company may be removed from office by Court, and provisions for relief against company or directors. 10. Order for account, on application of trustee, <i>cestui que trust</i>, &c. | <ol style="list-style-type: none"> 11. Supreme Court or Judge may order audit in any estate in hands of company. 12. Voluntary winding-up of company or disposal of shares may be restrained by Supreme Court or Judge. 13. Moneys remaining unclaimed in the hands of the company for five years to be paid into the Public Account. 14. Shareholders to be liable to contribute £5 per share over and above their ordinary liability on the shares. 15. Statement of assets and liabilities of company to be gazetted half-yearly. 16. One-third of the directors to retire annually. 17. Company in general meeting to fill up vacated offices. 18. Casual vacancy may be filled up by directors. 19. Two-thirds of the shareholders always to be domiciled in the colony. 20. Incorporation and powers of company, except so far as specifically altered, to remain. 21. Act not to preclude other companies from applying for similar powers to those conferred by this Act. <p>Schedule.</p> |
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1882, No. 4.—*Private.*

- Title.** AN Act to confer Powers upon the Trustees, Executors, and Agency Company of New Zealand (Limited). [15th September, 1882.]
- Preamble.** WHEREAS from the uncertainty of human life, and from other causes, great difficulty often arises in securing the services of suitable persons for the office of trustee, executor, liquidator, guardian, and other similar offices: And whereas in order to secure the more certain discharge of the duties of such offices a company has been formed and incorporated under "The Joint-Stock Companies Act, 1860," by the name of the Trustees, Executors, and Agency Company of New Zealand (Limited), with the object, among other purposes, of affording persons the opportunity of obtaining the services of a permanent corporation for the performance of the duties of such offices, and thus to remove much of the uncertainty and insecurity which attends the appointment of private individuals: And whereas it is expedient to enable the said incorporated company styled the Trustees, Executors, and Agency Company of New Zealand (Limited),

to act as liquidator, executor, trustee, and guardian, and to perform and discharge all the duties of such offices and to receive remuneration for such duties, and also to act as receiver and as committee of the estate under any law now in force or hereafter to be in force in the colony relating to lunatics, and also as assignee or trustee under any law now in force or hereafter to be in force in the colony relating to bankruptcy or to insolvent debtors, and as agent under power of attorney, and to perform and discharge all the duties of such offices and to receive remuneration for such duties, and to confer upon the said company the powers and privileges hereinafter set forth, in order to enable the said company the more effectually and usefully to carry out the objects sought in its incorporation :

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

1. The Short Title of this Act is “The Trustees, Executors, and Agency Company Act, 1882.” Short Title.

2. Whenever the said company shall be named as executor in the last will and testament, or in any codicil to the last will and testament of any testator, it shall be lawful for such company, if it shall elect so to do, to be and act as executor; and the said company shall be entitled to apply for and obtain probate of the will and codicils of the testator, and to perform and discharge all other the acts and duties of an executor as fully and effectually as a private individual may do when appointed executor. Company may act as executor and obtain probate.

3. In all cases in which the said company is empowered under this Act to apply for probate, it shall be lawful for the Court in which or the officer before whom such application is made to receive and act upon an affidavit made by a director, or by the manager of the company, in place of any affidavit required by the said Court to be made by persons making application for probate. Court to act upon affidavit of director or manager in applications for probate.

4. In all cases in which probate shall be granted to the said company, all the capital both paid and unpaid, and all other assets of the company, shall be liable for the proper administration of the estate committed to the company. Assets of Company to be liable for proper administration of estates.

5. In all cases in which any Court of justice, or any person or persons having authority or power to appoint a guardian, or an assignee, or a trustee or trustees under any law now in force or hereafter to be in force in the colony relating to bankruptcy or to insolvent debtors, or trustee or receiver or a committee of the estate under any law now in force or hereafter to be in force in the colony relating to lunatics, or a liquidator for any joint-stock company under any law now in force or hereafter to be in force in the colony relating to joint-stock companies, shall see fit to appoint the said company as trustee or assignee under any such law relating to bankruptcy or insolvent debtors, or as trustee or as receiver or as committee of the estate under any such law relating to lunatics, or as liquidator under any such law relating to joint-stock companies, it shall be lawful for the said company to be so appointed, and to act until removed from such office, as such guardian, trustee, assignee, receiver, committee, or liquidator, and to perform and discharge all acts and duties pertaining to the position of guardian, trustee, assignee, receiver, committee, or liquidator : And the capital of the said company, both paid and unpaid, and all other assets of the company, shall be liable for the proper discharge of the duties committed to the said company; and so soon as the paid-up capital of the company shall amount to the sum of ten thousand pounds, such sum being invested in securities in the colony, to be approved of by and deposited with the Public Trustee, such liability of the capital and other assets of the company shall be deemed sufficient Company may be appointed trustee, receiver, or committee of estate under Acts relating to lunacy, bankruptcy, &c.

security for the discharge of such duties in place of the bond required from private persons when appointed as assignee, trustee, receiver, or committee.

Company may act under power of attorney by manager and any director, or by two directors.

6. It shall be lawful for the said company to act under any power of attorney by which such company is appointed attorney by any person, or by any company or corporation; and all powers conferred upon such company by any such power of attorney may be exercised and carried into execution by the manager and any director, or by any two directors of the said company; but in all cases the capital, both paid and unpaid, and all other assets of the said company, shall be liable for the due execution of the powers so conferred upon the said company.

Manager may attend on behalf of company, and shall be personally responsible to Court.

7. In all cases in which the personal attendance of an executor, assignee, trustee, receiver, committee, guardian, or liquidator is required in a Court of justice or elsewhere, the said company shall be entitled to make such attendance in the person of the manager of the said company, and the personal duties of executor, trustee, receiver, committee, guardian, or liquidator may be discharged on behalf of the said company by the manager; and such manager shall be responsible in his own proper person by process of attachment, commitment for contempt, or by other process, to all Courts having jurisdiction over the matter, for the proper discharge of such duties, and for obedience to the orders and decrees of such Courts, as well by the said company as by the said manager, and by all officers of the company; but, notwithstanding such personal liability of the said manager, the capital, both paid and unpaid, and all the assets of the said company shall remain liable for any pecuniary loss which may be occasioned or may happen through the imperfect or improper discharge or through the neglect of the said company, or of any of its officers, of any act or duty in respect of any office, appointment, or engagement held or entered upon by the said company.

Company to be paid a commission on moneys received.

8. The said company shall be entitled to receive, in addition to all moneys properly expended by it and chargeable against the estates placed under the administration and management of the said company, a commission to be fixed from time to time by the board of directors of the said company, but not to exceed in any case five pounds for every one hundred pounds received by the said company as executor, trustee, receiver, committee, guardian, or liquidator, or as an attorney acting under power of attorney; and such commission shall be payable out of the moneys or property committed to the management of the said company, and shall be received and accepted by the said company as a full recompense and remuneration to the said company for acting as such executor, receiver, committee, guardian, liquidator or attorney; and no other charges beyond the said commission and the moneys so expended by the said company shall be made by the said company:

Provided that the commission to be charged by the said company shall not exceed in each estate the amount of the published scale of charges of the said company at the time when such estate was committed to the said company, nor shall this enactment prevent the payment of any commission or remuneration directed by a testator in his will, in lieu of the commission to be charged by the company.

Company may be removed from office by Court, and provisions for relief against company or directors.

9. In all cases in which the said company shall be appointed executor, trustee, assignee, receiver, committee, guardian, liquidator, or attorney under power, the said company shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liable to removal as private individuals who may be appointed executor, trustee, assignee, receiver, committee, guardian, liquidator, or attorney are subject to.

10. If any trustee, *cestui que trust*, executor, or legatee, administrator, or next of kin, or creditor, entitled to or interested in any estate which shall have come or shall hereafter come into the possession or under the control of the said company, shall be unable, upon application to the managing director or to the manager of the said company, to obtain a sufficient account of the property and assets of which such estate shall consist, and of the disposal and expenditure thereof or thereout, such trustee, *cestui que trust*, executor, or legatee, administrator, or next of kin or creditor, shall be entitled to apply to the Supreme Court, or to any Judge thereof, upon motion, after notice to the said company but without suit or petition for an account; and if the said Supreme Court or Judge shall be of opinion that no sufficient account has been rendered by the said company, the said Court or Judge shall order such account to be rendered by the said company as to the said Court or Judge shall seem just; or if the said Court or Judge shall think that no sufficient case has been established to require the said company to furnish an account, it shall be lawful for the said Court or Judge to dismiss the application; and the said Court or Judge shall have power in all cases to make such order as to costs, either against the said company or against the applicant, or as to payment of costs out of the estate, as to the said Court or Judge shall seem right.

Order for account on application of trustee, *cestui que trust*, &c.

11. It shall be lawful for the Supreme Court, or for any Judge thereof, on application under the last preceding section, to order, in addition to or in substitution for any account to be rendered by the said company, that a person to be named in such order shall examine the books and accounts of the said company in reference to the estate as to which the order is made; and in that case the said company shall deliver to the person named in such order a list of all books kept by the said company, and shall produce to such person at all reasonable times when required the said books, and all accounts, vouchers, papers, and other documents of the said company, and shall afford to him all necessary information and all other necessary facilities for enabling him to make the said examination.

Supreme Court or Judge may order audit in any estate in hands of company.

And the said Court or any Judge thereof shall have the same power as to the costs of such examination as is given by the last preceding section in reference to costs of or occasioned by the application under that section.

12. So long as any estate in respect of which the said company is executor or trustee shall remain in whole or in part unadministered, it shall not be lawful to proceed to wind up the said company voluntarily, unless with the sanction of the Supreme Court or of a Judge of such Court; and it shall be lawful for any person interested in such estate, or who may have any claim in respect thereof, to apply to the Supreme Court or to a Judge of such Court, in a summary way, to restrain any director or any shareholder from disposing of any share which such director or shareholder may hold in the said company, or to restrain the winding-up voluntarily of the said company; and the said Court or Judge shall in any and every such case have power to make such order in the matter as the circumstances of each case shall appear to such Court or Judge to require.

Voluntary winding-up of company or disposal of shares may be restrained by Supreme Court or Judge.

13. All moneys which form part of any estate of which at any time the said company shall be executor or trustee, and which moneys shall remain in the hands of the company unclaimed by the person entitled to the same for a period of five years after the time when the same shall have become payable to such person, except where payment has been or shall be restrained or prevented by injunction or order of some Court of competent jurisdiction, shall be paid over by the company to the Public Account of the colony, and thereafter dealt with

Moneys remaining unclaimed in the hands of the company for five years to be paid in to the Public Account.

by the Colonial Treasurer in like manner as moneys remaining unclaimed in the Public Trust Office are directed by "The Public Revenues Act, 1878," to be paid over and dealt with. And every such payment shall, to the extent of the moneys paid, discharge the company of the trust in respect of such moneys.

If default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day while such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Shareholders to be liable to contribute £5 per share over and above their ordinary liability on the shares.

14. In the event of the said company being wound up, every then present and past member of the said company shall be liable to contribute to the assets of the said company to the extent of five pounds upon each share of which such member then is or shall have been within one year, or in the case of a director of the said company within two years, next prior to the commencement of such winding-up the holder, over and above the amount (if any) unpaid on the shares in respect of which he may be liable as a present or a past member.

Statement of assets and liabilities of company to be gazetted half-yearly.

15. The managing director or manager of the company shall, within one month after the passing of this Act, and also on the first Monday in April and the first Monday in October in every year during which the company carries on business, make before some Justice of the Peace a declaration in the form contained in the Schedule hereto, or as near thereto as circumstances will admit; and a copy of such declaration shall be published in the *New Zealand Government Gazette*, and shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and shall be given to any member or creditor of the company who applies for the same.

If default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day while such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

One-third of the directors to retire annually.

16. At the ordinary general meeting of the said company to be held in the year one thousand eight hundred and eighty-three, and at the ordinary general meeting in every subsequent year, one-third of the directors for the time being of the said company, or if their number is not a multiple of three then the number nearest to one-third, shall retire from office. The one-third or other nearest number to retire during the first two years next after the passing of this Act shall, unless the directors agree among themselves, be determined by ballot. In any subsequent year the one-third or other nearest number who have been longest in office shall retire.

Company in general meeting to fill up vacated offices.

17. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons. Retiring directors shall be eligible for re-election.

Casual vacancy may be filled up by directors.

18. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person chosen to fill the vacancy shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Two-thirds of the shareholders always to be domiciled in the colony.

19. At least two-thirds of the whole number of the shareholders of the said company, holding between them more than one-half of the whole number of shares in the said company, shall always be persons domiciled in the Colony of New Zealand.

20. Nothing in this Act contained shall be construed to affect the constitution or incorporation of the company, but the company shall continue under its original incorporation, with the powers and privileges by this Act conferred, and subject to the additional duties and liabilities by this Act imposed.

Incorporation and powers of company, except so far as specifically altered, to remain.

21. Nothing in this Act shall be deemed to give to the said company any *locus standi* to oppose the granting of similar powers to those conferred upon the company by this Act to any other company, or to seek compensation in consequence of such powers being conferred upon any other company or upon corporations generally.

Act not to preclude other companies from applying for similar powers to those conferred by this Act.

SCHEDULE.

Schedule.

I, _____, Manager [*or as the case may be*], do solemnly and sincerely declare,—

1. That the liability of the members is limited.
2. That the capital of the company is _____, divided into _____ shares of _____ each.
3. That the number of shares issued is _____.
4. That calls to the amount of _____ pounds per share have been made, under which the sum of _____ pounds has been received.
5. That the amount of all moneys received on account of estates is £ _____.
6. That the amount of all moneys paid on account of estates is £ _____.
7. That the amount of the balance held to the credit of estates under administration is £ _____.
8. That the liabilities of the company on the first day of January [*or July*] last were—
 - Debts owing to sundry persons by the company, viz. :—
 - On judgment, £ _____
 - On specialty, £ _____
 - On notes or bills, £ _____
 - On simple contracts, £ _____
 - On estimated liabilities, £ _____
9. That the assets of the company on that day were—
 - Government securities, £ _____
 - Bills of exchange and promissory notes, £ _____
 - Cash at the bankers, £ _____
 - Other securities, £ _____

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act of the General Assembly of New Zealand, intituled "The Justices of the Peace Act, 1882."