

An Act to confer powers upon the “Perpetual
Trustee Company (Limited).” [29th June,
1888.]

PERPETUAL
TRUSTEE COMPANY
(LIMITED).

WHEREAS in this Colony it is often difficult to procure proper Preamble.
persons to undertake the onerous and responsible duties of
trustee, executor, or administrator. And whereas the deaths, resigna-
tions, and absence from the Colony of executors, trustees, and others
filling similar offices are often attended with great disadvantage and
loss to the estates with the administration of which they are entrusted.
And whereas it is desirable for the purpose of obtaining regularity
and security in the administration of trust estates that permanent
corporations should be empowered to fill the offices of trustee, executor,
administrator, receiver, agent, and other like offices. And whereas a
certain Company, styled the “Perpetual Trustee Company (Limited),”
has been registered under the Companies Act, with a capital of one
million pounds divisible into one hundred thousand shares of ten
pounds each, for the purpose of undertaking the duties of such offices
as aforesaid for a commission. And whereas it is expedient that the
necessary powers should be conferred upon the said Company, herein-
after called the Company, in order to enable it to act as executor,
administrator, administrator with the will annexed, trustee, receiver,
committee of the estates of persons of unsound mind, and as agents, and
to perform and discharge all the duties of such offices and to receive
remuneration therefor, and to confer upon the Company all such
privileges and powers as are necessary or expedient for the purposes
aforesaid. Be it therefore enacted by the Queen’s Most Excellent
Majesty, by and with the advice and consent of the Legislative Council
and Legislative Assembly of New South Wales in Parliament
assembled, and by the authority of the same, as follows:—

1. Whenever the Company has been or shall be named as
executor in the last will and testament or in the codicil to the last
will and testament of any testator it shall be lawful for the Company
to Company may act as
executor and obtain
probate.

Perpetual Trustee Company (Limited).

Person entitled to obtain letters of administration with the will annexed may authorize Company to do so.

Persons entitled to obtain letters of administration may authorize Company to do so.

Company on being granted letters of administration may perform all acts which belong to the office of administrator notwithstanding its incorporation.

Court to act upon affidavit of managing director, manager, or acting manager in applications for probate or administration.

Assets of Company to be liable for proper administration of estates, and no bond to administer to be required when paid-up capital is £25,000, of which £20,000 is invested in Government securities.

Company may be appointed trustee, receiver, committee, or guardian of estate.

to act as executor and to apply for and to obtain probate of the will of the testator and to perform and to discharge all other the acts and duties of an executor as fully and effectually as any other executor.

2. It shall be lawful for any person or persons entitled to obtain letters of administration with the will of any testator annexed of the estate of such testator, to authorize the Company to apply for and to obtain letters of administration with the will annexed, which may be granted to the Company upon its own application when so authorized.

3. It shall be lawful for any person or persons entitled to obtain letters of administration of the estate of any intestate as his or her next of kin, to authorize the Company to apply for such letters of administration, and administration of the estate of the intestate may be granted to the Company upon its own application when so authorized.

4. It shall be lawful for the Company where the administration of any estate with or without the will annexed has been granted to it, to do and perform all acts and duties which belong to the office of administrator or administrator with the will annexed, as the case may be, notwithstanding its incorporation.

5. In all cases in which the Company is empowered under this Act to apply for probate or for letters of administration, an affidavit made by the managing director, manager, or acting manager of the Company shall be received instead of any affidavit required by any Charter Act of Parliament or rule of Court to be made by persons making application for probate or letters of administration.

6. All the capital, both paid and unpaid, of which paid-up capital twenty thousand pounds shall be invested in the purchase of debentures or inscribed stock in such of the public funds of the Colony as the directors of the Company may select in the name of the Colonial Treasurer in trust for the Company, but transferable only with the joint consent of the said Treasurer and the Company, or upon the order of the Supreme Court or a Judge thereof, and all other assets of the Company, shall be liable for the proper administration of all estates of which the Company shall act as executor or administrator, and no bond for the due administration of any estate shall be required to be given by or on behalf of the Company, except in respect of estates exceeding twenty thousand pounds in value, in which the said Court or a Judge thereof shall otherwise order, and all interest and income to accrue from time to time from or in respect of all such debentures and inscribed stock shall be paid by the said Treasurer to the Company as and when the same shall respectively become payable.

7. It shall be lawful for any Court or Judge or person now or hereafter having power to appoint trustees, receivers, committees of the estates of persons of unsound mind, or guardians of the estates of infants, in any case to appoint the Company to be trustee, receiver, committee, or guardian as the case may be, and upon any such appointment all the capital of the Company, both paid and unpaid, and all other assets of the Company, and the managing director, manager, or acting manager, as the case may be, and directors, and their respective estates, shall be liable for the proper discharge of the duties of the office, either of trustee, receiver, committee, or guardian, as the case may be, and so soon as the Company shall possess a paid-up capital of not less than twenty-five thousand pounds, of which paid-up capital twenty thousand pounds shall be invested as aforesaid, no bond or recognizance for the proper discharge of such duties shall be required to be given by or on behalf of the Company. Provided that the Company shall not be so appointed trustee of any deed or will which shall forbid the appointment of a Company as trustee thereof, nor in any case in which the majority of the persons who shall be beneficially interested shall not consent to such appointment, unless the consent of the Primary Judge in Equity of the Supreme Court shall have been first obtained.

Perpetual Trustee Company (Limited).

8. It shall be lawful for the Company to act as attorney whenever it shall be appointed by deed attorney for any person or any corporation, and all the powers conferred upon the Company by any power-of-attorney may be exercised and carried into execution by the managing director, manager, acting manager, or by any two of the directors of the Company, but in all cases the capital, both paid and unpaid, and all other assets of the Company, shall be liable for the due execution of the powers so conferred upon the Company. Provided always that nothing herein contained shall be deemed to authorize any person, Company, or corporation to confer any power upon the Company which cannot by law be delegated or performed by attorney.

Company may act under power of attorney, by managing director, manager, acting manager, or two directors.

9. It shall be lawful for any executor, administrator, or trustee, by deed to delegate to the Company as his attorney all such trusts and powers as may by law be delegated, and all acts done by the Company within the scope of such delegation shall, in favour of any persons dealing with the Company without notice of the death of or revocation of authority by such executor, administrator, or trustee, be valid and effectual notwithstanding such death or revocation.

Executor administrator or trustee may delegate trusts to Company.

10. It shall be lawful for the Supreme Court or any Judge thereof sitting in its ecclesiastical jurisdiction, on the application of any executor or administrator acting under any probate or letters of administration granted either before or after the coming into operation of this Act, to appoint the Company to be administrator in his place or stead, and thereupon the Company shall have the same powers and authorities as if it had been the original executor or administrator, as the case may be, and in every such case all the capital, both paid and unpaid, and all other assets of the Company, and the managing director, manager, or acting manager, as the case may be, and directors and their respective estates shall be liable for the due administration of the estates of which the Company shall be so appointed administrator.

Executors or administrators with the consent of the Primary Judge may appoint Company to discharge duties.

11. Every application to the Court or any Judge shall be by motion, and notice of the intended application shall be advertised in a daily newspaper published in Sydney, at least seven days before the making thereof, and if the application shall be made by the executor or administrator of any testator or intestate who shall have died in New South Wales, a like notice shall also be advertised once in some newspaper, if any, published in the district in which such testator or intestate shall have resided, and the Court or any Judge may require any person resident in New South Wales, and entitled to the immediate receipt of any of the income or corpus of the estate in respect of which the application is made, to be served with notice thereof, and the costs of such application shall be in the discretion of the Court or Judge, and may be ordered to be paid out of the estate.

Application for consent to be by motion.

12. Whenever an executor, administrator, trustee, receiver, committee, or guardian is or shall be required by any law, Charter Act of Parliament, or rule of Court, to attend in person in any Court of Justice or elsewhere, it shall be lawful for the Company to attend by its managing director, manager, or acting manager, and all affidavits, statements of defence, or other statements required by law to be made on oath may be made and sworn on behalf of the Company by its managing director, manager, or acting manager, and whenever probate or letters of administration shall have been granted to the Company, and whenever the Company shall be appointed and shall act as trustee, receiver, committee, or guardian, the managing director, manager, or acting manager, as the case may be, and directors in their own proper persons and estates shall be individually and collectively responsible for the due administration of the estates entrusted to the Company, and shall in their own proper persons be liable by process of attachment, commitment for contempt, or by other process to all Courts having

Managing director, manager, or acting manager, may attend on behalf of Company and directors, and shall be personally responsible to Court.

Perpetual Trustee Company (Limited).

having jurisdiction in that behalf in the event of disobedience to the rules orders and decrees of such Courts made against the Company in the same manner and to the same extent as if such managing director, manager, or acting manager, or directors, had personally obtained probate or letters of administration and had acted as executor, administrator, trustee, receiver, committee, or guardian, and as if the rule, order, or decree, had been made against them personally instead of against the Company, but notwithstanding such personal responsibility of the said managing director, manager, acting manager, or directors, the capital, both paid and unpaid, and all the assets of the Company shall remain liable for any loss which may be occasioned by or which may happen through any breach of trust or duty committed by the Company or any of its officers, whether such trust or duty be implied by law or expressly conferred by the instrument under which the Company shall act; and no person shall be appointed a director or manager of the said Company unless he is a *bonâ fide* resident of New South Wales; and any person being a director or manager of the said Company who ceases to reside in New South Wales shall, upon so ceasing to reside, vacate his office, and such vacancy shall be filled up in the manner provided by the articles of association for filling casual vacancies.

Company to be paid a commission on moneys received by them.

13. The Company shall be entitled to receive in addition to all moneys properly expended by it and chargeable against any estate of which the administration shall be committed to the Company, whether as executor, administrator, trustee, receiver, committee, or guardian, a commission at a rate to be fixed from time to time by the board of directors of the Company, but not to exceed in any case two pounds ten shillings for every one hundred pounds of the corpus or capital value of any such estate and five pounds for every one hundred pounds of the annual income of any such estate received by the Company and of all moneys (whether capital or income) received by the Company as an attorney acting under power-of-attorney, and such commission shall be payable out of the moneys in the possession of the Company representing the estate upon which the same shall be chargeable, and shall be accepted by the Company in full satisfaction of any claim to remuneration for acting as such executor, administrator, trustee, receiver, committee, guardian, or attorney, and no other charges beyond such commission and moneys properly expended by the Company shall be made or allowed. Provided that if in any estate the Primary Judge in Equity shall be of opinion that the rate of commission charged is excessive such Judge may review and reduce such commission. Provided also that the commission to be charged by the Company against any estate shall not exceed the amount of the published scale of charges of the Company at the time when the administration of such estate was committed to the Company, nor shall this enactment prevent the payment of any commission directed by a testator in his will either in addition to or in lieu of the commission hereinbefore authorized.

Company may be removed from office by Court.

14. Whenever the Company shall have been appointed executor, administrator, trustee, receiver, committee, guardian, or attorney, it shall be subject in all respects to the same control and to removal or restraint from acting and generally to the jurisdiction of the Courts in the same manner as any other executor, administrator, trustee, receiver, committee, guardian, or attorney.

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

15. It shall be lawful for any trustee *cestui que* trust, executor, or legatee, administrator, or next of kin, or creditor entitled to or interested in any estate which shall for the time being be under the management or control of the Company, after demand in writing made to the managing director, manager, or acting manager of the Company, for a sufficient account of the property and assets of which such estate shall consist,
and

Perpetual Trustee Company (Limited).

and of the disposal and expenditure thereof or thereout, and upon non-compliance with such demand within a reasonable time to apply to the Primary Judge in Equity of the Supreme Court in a summary manner, upon motion after notice to the Company for an account, and if the said Judge shall be of opinion that no sufficient account has been rendered by the Company, the said Judge shall order such account to be rendered by the Company as to the said Judge shall seem just, or if the said Judge shall think that under the circumstances the Company was not bound to furnish any account or that a sufficient account had been furnished it shall be lawful for the said Judge to dismiss the application, and the said Judge shall have power in all cases to make such order as to costs either against the Company or against the applicant or as to payment of costs out of the estate as to the said Judge shall seem right.

16. It shall be lawful for the said Primary Judge upon the making of any application under the last preceding section to order in addition to or in substitution for any account to be rendered by the Company that a person to be named in such order shall examine the books and accounts of the Company in reference to the estate as to which the order is made, and in that case the directors and officers of the Company shall deliver to the person named in such order a list of all books kept by the Company, and shall produce to such person at the office of the Company at all reasonable times when required all books and accounts, vouchers, papers, and other documents of the Company relating to such estate, and shall afford to him all necessary information and all other necessary facilities for enabling him to make the said examination, and the said Judge shall have the same power over the costs of such examination as is given by the last preceding section over the costs of an application under that section.

Primary Judge may order audit in any estate committed to Company.

17. So long as any estate in respect of which the Company is executor, administrator, trustee, committee, or guardian, shall remain in whole or in part unadministered, it shall not be lawful to proceed to wind-up the Company voluntarily unless with the sanction of the said Primary Judge, 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 said Judge in a summary way by motion to restrain any director or any shareholder from disposing of any shares which such director or shareholder may hold in the Company, or to restrain the winding-up voluntarily of the Company, and the said Judge shall have power to make such order upon such application as the circumstances of the case shall appear to the said Judge to require.

Voluntary winding-up of Company or disposal of shares may be restrained by the Primary Judge.

18. If it be proved at any time to the satisfaction of the Primary Judge that three-fourths or more of the amount of capital authorized by this Act to be called up has been lost by the Company it shall be lawful for such Judge upon the application of any member, creditor, or *cestui que* trust of the Company to make an order for the winding-up of the Company.

Primary Judge may order winding-up of Company.

19. The following provisions with respect to the liability of shareholders in the Company shall be and remain in force notwithstanding any alteration which may be made in its articles of association—

Provisions as to liability of shareholders and directors.

No member shall hold more than two thousand shares in his own right. Provided that if the capital of the Company shall be increased by the issue of new shares the number of shares which may be held by each member shall be proportionately increased.

No more than five pounds per share shall be called up except in the event of and for the purpose of the winding-up of the Company, and every member shall in such event be liable to contribute the unpaid balance of every share held by him.

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Perpetual Trustee Company (Limited).

In the event of the Company being wound-up, every person who has been a director of the Company at any time within the period of two years preceding the commencement of the winding-up shall be liable for the balance unpaid on every share which he may have transferred during such two years in addition to his liability upon any shares held by him at the commencement of the winding-up, in the event of the holder or holders of such shares being unable to pay the said balance per share in full.

The capital of the Company shall be and remain divided into shares of ten pounds each, and the number of shares in the Company shall not be at any time reduced to less than fifty thousand.

Moneys remaining unclaimed for five years to be paid into Colonial Treasury.

20. All moneys which form part of any estate of which at any time the Company shall be executor, administrator, or trustee, and which moneys shall remain 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 by the injunction of some Court of competent jurisdiction, shall together with interest at current rates on fixed deposits in Banks, be paid by the Company into the Colonial Treasury, to be placed to the credit of a fund to be called the Testamentary and Trust Fund, distinguishing the particular estates in respect of which such moneys shall have been paid, and the Colonial Treasurer shall from time to time invest such moneys in the purchase of Government debentures or stock to be placed to the credit of the said Testamentary and Trust Fund, distinguishing in the ledger the particular estate in respect of which such moneys have been invested, and the interest payable on such debentures or stock shall be placed to the credit of the said fund, and the said Treasurer's said account in the ledger shall be an official and not a nominal account, and in all transfers of the said debentures and stock by the said Treasurer he shall be so styled without any name, addition or description, and he shall not sign any such transfers or pay over any of the moneys standing to the credit of the said fund unless an order of the Primary Judge in Equity directing such transfer and specifying the amount of moneys, debentures, or stock, and the name, description, and addition of the person to whom the proceeds of such sale are to be paid shall be left at the office of the said Treasurer, nor, until the purchase money of the debentures or stock to be sold has been received in the Colonial Treasury, and the Company shall at the end of every six months deliver to the said Treasurer a statement of all such unclaimed moneys which during the preceding six months shall have been in its hands, and distinguishing the several estates in respect of which the same have been received, and setting out the dates and amounts of the several payments of the same under this section, and if the said moneys or any part thereof have not been paid into the Colonial Treasury stating the reason for the delay of such payments, and if default is made in compliance with the foregoing 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 managing director, manager, or acting manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Persons entitled to moneys in Testamentary and Trust Fund may apply to Primary Judge.

21. It shall be lawful for any person who shall be entitled to any stock, debentures or moneys which shall at any time form part of the said Testamentary and Trust Fund to apply to the said Primary Judge upon petition in a summary way for such order as is in the last preceding section referred to, and the said Judge shall deal with such application as nearly as may be in the same manner as in the case of applications

Perpetual Trustee Company (Limited).

applications to the said Court under the "Trustee Relief Act of 1858." And in all cases in which the Colonial Treasurer may see fit to appear upon such petition he shall be entitled to such costs against the applicant or out of the fund as the said Judge may direct.

22. It shall be lawful for the Colonial Treasurer, after demand in writing addressed to the managing director, manager, or acting manager of the Company for a sufficient account of the property and assets of which any or every estate included in or which ought to be or to have been included in the hereinbefore mentioned statement of unclaimed moneys shall consist, and of the disposal and expenditure thereof or thereout, to apply to the said Primary Judge in a summary way upon motion after notice to the Company for an account, and if the said Judge shall be of opinion that no sufficient account has been rendered by the Company the said Judge shall order such account to be rendered by the Company as to the said Judge shall seem just, or if the said Judge shall think that under the circumstances the Company was not bound to furnish any account or that any account furnished by the Company was sufficient it shall be lawful for the said Judge to dismiss the application, and the said Judge shall have power in all cases to make such order as to costs either against the Company or as to payment of costs out of the estate as to the said Judge shall seem right.

Order for account on application of Treasurer.

23. The managing director, manager, or acting manager of the Company shall, during the months of January and July 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, of the receipts, expenditure, and investments of and in all estates and property held by the Company in Trust up to the thirty-first day of December or thirtieth day of June then last past; such declaration shall within seven days after the making thereof be filed in the office of the Master in Equity, and a copy of such declaration 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 or any *cestui que* trust who applies for the same, and 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 managing director, manager, or acting manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Returns to be made by Company to be filed in registered office of the Company or its branches.

24. Every order made by the Primary Judge in Equity under this Act shall be subject to appeal in the same manner and under the same conditions as other orders of the said Judge.

Appeal from Primary Judge.

25. Nothing in this Act contained shall be deemed to give to the Company any right to oppose the granting of similar powers to those conferred upon the Company by this Act to any other Company or to corporations generally or to claim or to seek compensation in consequence of such powers being conferred upon any other Company or upon corporations generally, or in the event of provision being made by Parliament for the management of trust estates by a department or officer of the Government, or in the event of the repeal of this Act.

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

26. Where by any settlement, will, codicil, or other testamentary writing, a settlor or testator shall direct that any practising solicitor or solicitors shall conduct the legal business of his or her estate, such solicitor or solicitors shall be entitled to act therein accordingly, but in such case the Company shall not be liable for the negligence, misfeasance, nonfeasance, or misconduct of such solicitor or solicitors, and such solicitor or solicitors may be removed by order of the Primary Judge in Equity upon the application of the Company or of any person

Settlers or testators may appoint their own solicitors.

Perpetual Trustee Company (Limited).

person interested in the said estate upon cause shown, and then and in such case the said Judge may appoint the solicitor or solicitors of the Company to conduct such legal business.

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

27. Except so far as is herein expressly provided the Company shall have and be subject to the same restrictions, liabilities, penalties, privileges, and powers as it has and is subject to under its present incorporation, and this Act shall not otherwise affect the incorporation of the Company.

Recovery of penalties.

28. Any penalty imposed by this Act may be recovered in a summary way before two Justices of the Peace.

Short title of Act.

29. This Act shall be called and may be cited as the "Perpetual Trustee Company (Limited) Act."

SCHEDULE.

"The Perpetual Trustee Company (Limited)."

I [managing director or as the case may be] do hereby solemnly declare and affirm:—

That the liability of the members is limited.
That the capital of the Company is _____ pounds divided into _____ shares of _____ pounds each.

That the number of shares issued is _____
That calls to the amount of _____ pounds _____ shillings per share have been made, under which the sum of _____ pounds has been received.

That the debts owing to sundry persons by the Company on the _____ day of _____ one thousand eight hundred and eighty-_____ were—
On judgment £
On speciality £
On notes or bills £
On simple contracts £
On estimated liabilities £

Total £

That the assets of the Company other than assets held on trust on the _____ day of _____ one thousand eight hundred and eighty-_____ were—
Government securities £
Bills of exchange and promissory notes £
Cash at the banks £
Other securities £

Total £

That the value of the real and personal property come to the hands of the Company as trustees, executors, administrators, receivers, and agents, up to and inclusive of the _____ day of _____ one thousand eight hundred and eighty-_____ was as follows—

	Estimated Values.
Real property	£
Chattels real	£
Moneys secured by mortgage of real property ...	£
Moneys secured by mortgage of personal property	£
Unsecured debts and claims	£
Debentures	£
Bank shares	£
Shares in other companies (other than bank shares)	£
Cash	£

Total receipts £

That up to the _____, one thousand eight hundred and eighty-_____, the following are the amounts of—

Real property conveyed to beneficiaries	£
Cash paid to beneficiaries as corpus... ..	£
Cash paid to beneficiaries as income	£
Cash applied in payment of debts	£
Cash applied in payment of administration expenses	£
Commission retained	£

Total expenditure £

That

Kiama Tramway Act Amendment.

That the investments and moneys held by the Company, upon trust, on the
day of _____, one thousand eight hundred and eighty-_____, were as follows, viz.—

Real property ...	...	...	...	...	...	£
Chattels real ...	...	...	...	...	...	£
Mortgages ...	...	...	...	...	...	£
Debentures ...	...	...	...	...	...	£
Bank shares ...	...	...	...	...	...	£
Shares in other companies ...	...	...	...	...	...	£
Money on deposit with banks and other companies						£
Cash on hand ...	...	...	...	...	...	£
Total ...						£

And I make this solemn declaration, as to the matters aforesaid, according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.
