

TASMANIA.

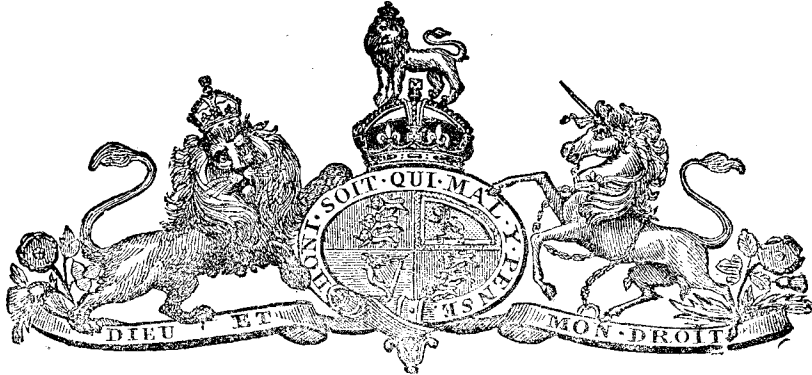
THE EQUITY TRUSTEES COMPANY
ACT, 1928.

ANALYSIS.

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| <ol style="list-style-type: none"> 1. Short title. 2. Company may act as executor and obtain probate. 3. Company may obtain letters of administration and act as administrator. 4. Persons entitled to probate may authorise Company to obtain administration with will annexed. 5. Persons entitled to administration on intestacy may authorise Company to obtain administration. 6. Court to act upon affidavit of secretary, or acting-secretary, in applications for probate or administration. 7. Assets of Company to be liable for proper administration of estates, and no bond to administer to be required when paid-up capital is £10,000, of which £7500 is invested in Government securities. 8. Company may be appointed trustee, receiver, or committee of estate under lunacy law. 9. Company may act under power of attorney by secretary, or acting-secretary, or two directors. 10. Company may be appointed to act as temporary executor, or administrator, or trustee. 11. Executors, administrators, trustees, receivers, and committees may appoint Company to discharge duties for them. | <ol style="list-style-type: none"> 12. Application for consent under preceding section. 13. Secretary or acting-secretary may attend on behalf of Company and directors, and shall be personally responsible to court. 14. Company to be paid a commission on moneys received by it. 15. Company may be removed from office by court, and provisions for relief against Company or directors. 16. Order for account on application of trustee, <i>cestui que</i> trust, &c. 17. Supreme Court or judge may order audit in any estate committed to Company. 18. Voluntarily winding up of Company or disposal of shares may be restrained by Supreme Court or judge. 19. Liability of shareholders.
Two Pounds Ten Shillings per share to be available on winding up.
Capital to be in £5 shares, and not to be reduced. 20. Returns to be made by Company. 21. Testators and others may appoint their own solicitor. 22. Act not to preclude other companies from applying for similar powers to those conferred by this Act. 23. Incorporation and powers of Company, except so far as specifically altered, to remain. 24. Court may make general orders. 25. Costs. |
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T A S M A N I A.



1928.

ANNO NONO DECIMO

GEORGII V. REGIS.

No. 65.

AN ACT to confer Powers upon the
Equity Trustees Company of Tasmania
Limited. [15 January, 1929.]

A.D.
1928.

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, and other similar offices:

PREAMBLE

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 Companies Act, 1920, by the name of "The Equity Trustees Company of Tasmania 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 attend the appointment of private individuals:

And whereas it is expedient to enable the said incorporated Company to act as executor, administrator, and trustee, and to perform and discharge all the duties of such offices, and to

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receive remuneration for such duties; and also to act as receiver and as committee of the estate under the law relating to lunatics, idiots, and persons of unsound mind, 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 His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title.

1 This Act may be cited as “The Equity Trustees Company Act, 1928.”

Company may act as executor and obtain probate.

2 Whenever the said 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 such Company to act as executor; and the said Company shall be entitled to apply for and to obtain probate of the will 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 obtain letters of administration, and act as administrator.

3 In all cases and in like circumstances in which a private individual may apply for and obtain letters of administration with the will annexed of the estate of a deceased person, it shall be lawful for such individual, instead of himself applying, to authorise the said Company to apply for and to obtain letters of administration with the will annexed, which shall be granted to the said Company upon its own application when so authorised; and the said Company shall be entitled to perform and discharge all the acts and duties of an administrator as fully and effectually as a private individual may do to whom letters of administration are granted.

Persons entitled to probate may authorise company to obtain administration with will annexed.

4 Any persons or person named expressly or by implication as executors or executor who would be entitled to obtain probate of the will of any testator without reserving leave to any other person to apply for probate may, instead of themselves or himself applying for probate, authorise the said Company to apply to the Supreme Court for administration with the will annexed; and administration with the will annexed may be granted to the said Company upon its own application when so authorised, unless the testator shall have by his will expressed his desire that the office of executor should not be delegated, or that the said Company should not act in the trusts of his will.

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5 Any person entitled to obtain administration of the estate of any intestate as his next-of-kin may, instead of himself applying for administration, authorise the Company to apply for administration to such estate; and administration to the estate of the intestate may be granted to the said Company upon its own application when so authorised.

6 In all cases in which the said Company is empowered under this Act to apply for probate or for letters of administration, 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 the secretary or acting-secretary of the Company in place of any affidavit required by the said court to be made by persons making application for probate or for letters of administration.

7 In all cases in which probate or letters of administration 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; and so soon as the said Company shall possess a paid-up capital of not less than Ten thousand Pounds, of which paid-up capital Seven thousand five hundred Pounds shall be invested in Tasmanian Government stock, debentures, or Treasury bills, or in securities of the Commonwealth, or upon fixed deposit in any banking institution carrying on business in Tasmania in the name of the Treasurer of Tasmania in trust for the said Company, but transferable only upon the joint consent of the Treasurer and the said Company, or upon the order of the Supreme Court or a judge thereof, the said liability of the capital and assets of the Company shall be deemed, in the case of letters of administration granted to the Company, to be sufficient security in place and stead of the bond taken in the case of private individuals to whom letters of administration may be granted.

8 In all cases in which any court of justice, or any person or persons having authority or power to appoint any person as trustee or a receiver or committee of the estate under the law relating to lunatics, idiots, and persons of unsound mind, shall see fit to appoint the said Company as trustee, or as such receiver or such committee, it shall be lawful for the said Company to be so appointed and to act until removed from such office as such trustee or receiver or committee, and to perform and discharge all acts and duties pertaining to the position of trustee, receiver, or committee, 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 Ten thousand Pounds

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Persons entitled to administration on intestacy may authorise Company to obtain administration.

Court to act upon affidavit of secretary, or acting-secretary, 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 £10,000, of which £7500 is invested in Government securities.

Company may be appointed trustee, receiver, or committee of estate under lunacy law.

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such liability of the capital and other assets of the Company shall be deemed sufficient security for the discharge of such duties in place of the bond required from private persons when appointed as receiver or committee.

Company may act under power of attorney by secretary, or acting-secretary, or two directors.

9 It shall be lawful for the said Company to act under any power of attorney by which the Company is appointed attorney by any person or by any company or corporation; and all the powers conferred upon such Company by any such power of attorney may be exercised and carried into execution by the secretary or acting-secretary, or by any two of the 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. But this section shall not authorise any person, company, or corporation to confer any power upon the said Company which cannot be legally conferred upon a private individual.

Company may be appointed to act as temporary executor, or administrator, or trustee.

10 Any executor, administrator, or trustee may appoint the Company to act as executor, administrator, or trustee in his stead, and the Company, if so appointed by deed filed in accordance with any law now or hereafter to be in force providing for the filing of powers of attorney, may act within the scope of the authority conferred upon it as effectually as the executor, administrator, or trustee could have acted, and may exercise all discretionary and other powers delegated by the principal as fully and effectually as the principal could have exercised them; and, after the filing of such power as aforesaid, every act of the said Company within the scope of the authority conferred shall, in favour of any person who shall deal with the said Company *bona fide*, and without notice of the death of the principal or of his revocation of the authority, be valid and effectual notwithstanding the revocation by or death of the principal.

Executors, administrators, trustees, receivers, and committees may appoint Company to discharge duties for them.

11 It shall be lawful for the executors or executor, administrators or administrator, acting under any probate or administration, and for any such receiver or committee as aforesaid, with the consent of the Supreme Court or a judge thereof, to appoint the said Company to perform and discharge all the acts and duties of such executors or executor, administrators, or administrator, receiver or committee (as the case may be); and such Company shall have the power to perform and discharge all such acts and duties accordingly, and in every such case all the capital, both paid and unpaid, and all other assets of the said Company, shall be liable for the proper discharge of such duties; and the executors or executor, administrators or administrator, receiver or committee so appointing the said

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Company shall be released from liability in respect of all acts done by or omitted to be done by the said Company acting under such appointment. A.D. 1928.

12 Notice of any intended application for such consent shall be advertised once in one daily newspaper published in Hobart, and in one daily newspaper published in Launceston or on the North-West Coast of Tasmania, fourteen days before the making thereof, and the court or judge may require any person resident in Tasmania, 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 such consent shall not be given in any case of a will in which the testator has expressed his wish that the trusts thereof should not be delegated or that the said Company should not act therein. Application for consent under preceding section.

13 In all cases in which the personal attendance of an executor, administrator, trustee, or such receiver or committee as aforesaid is required in a court of justice or elsewhere, the said Company shall be entitled to make such attendance in the person of the secretary or acting-secretary of the said Company, and the personal duties of executor, administrator, trustee, receiver, or committee may be discharged on behalf of the said Company by the secretary or acting-secretary. Secretary or acting-secretary may attend on behalf of Company and directors, and shall be personally responsible to court.

In every case where the said Company shall obtain probate or letters of administration to be granted to the said Company, and also in every case where the said Company shall be appointed and shall act as trustee, receiver, or committee, the secretary or acting-secretary and directors shall be individually and collectively in their own proper persons responsible to the court, and shall in their own proper persons be liable, by process of attachment, commitment for contempt, or by other process, to all courts having jurisdiction in that behalf for the proper discharge of their duties and for obedience to the rules, orders, and decrees of such courts, in the same manner and to the same extent, as if such secretary or acting-secretary and directors had personally obtained probate or letters of administration and had acted as executor, administrator, trustee, receiver, or committee. But notwithstanding such personal responsibility of the said secretary or acting-secretary and directors, 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 which 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.

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

14 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 Two Pounds Ten Shillings for every One hundred Pounds of the capital value of any estate committed to the management of the said Company as executor, administrator, trustee, or as such receiver, or committee as aforesaid, and Two Pounds Ten Shillings for every One hundred Pounds of income received by the said Company as executor, administrator, trustee, receiver, or committee, or of capital or income received by the said Company as an attorney acting under power of attorney; and such commission shall be payable out of the moneys and 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, administrator, trustee, receiver, committee, 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.

If in any case the Supreme Court or judge thereof shall be of opinion that such commission is excessive, it shall be competent for such court or judge to review and reduce the rate of commission: 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 directed by a testator in his will in cases where such commission exceeds the amount hereinbefore authorised and in lieu of such commission.

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

15 In all cases in which the said Company shall be appointed executor, administrator, trustee, or as such receiver or committee as aforesaid, 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 liability to removal as private individuals who may be appointed executor, administrator, trustee, receiver, committee, or attorney are subject to. And it shall be lawful for all persons who may claim relief against the said Company for any act done or assumed to be done, or in respect of any act omitted to be done by the said Company, its directors or officers, under any of the powers conferred by this Act, to proceed in the Supreme Court or any other court of competent jurisdiction, either by suit, action, or other ordinary procedure of such court, or in any summary way by motion against the said Company

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or against any of the directors or officers of the said Company, and such court may make and enforce such order in such manner as to such court shall seem just.

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16 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 come into the possession or under the control of the said Company shall be unable, upon application to the secretary or acting-secretary 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, after notice to the said Company, 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.

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

17 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 such 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 in reference to the said estate 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 committed to Company.

18 So long as any estate in respect of which the said Company is executor, administrator, 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

Voluntarily winding up of Company or disposal of shares may be restrained by Supreme Court or judge.

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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 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.

Liability of shareholders.

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

No member shall hold more than one thousand shares in his own right.

Two Pounds Ten Shillings per share to be available on winding up.

No more than Two Pounds Ten Shillings 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 be liable for this amount per share in such event, in addition to the sum of One Pound Ten Shillings per share liable to be called up by the directors.

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 asset of the said Company to the extent of Five Pounds upon each share of which such member 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.

Capital to be in £5 shares, and not to be reduced

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

Returns to be made by Company.

20 The secretary or acting-secretary of the said Company shall, during the months of February and August in every year during which the said Company carries on business, make before some justice of the peace a declaration, duly audited, as to the assets and liabilities of the Company, 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 "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 sent to every member, and given to any 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 secretary of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

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21 Where by any will or other testamentary writing, or by any deed or any other instrument in writing, the said Company or other trustees or trustee of any such will, deed, writing, or instrument in writing shall be directed to employ any solicitor named therein to conduct the legal or professional business of any trust or other estate referred to in any such will, deed, writing, or instrument, or whenever the said Company shall, previously to the transfer to the said Company of the trusteeship, business, or management of any trust or other estate, agree with any solicitor that he shall have the conduct of and be employed in and about the legal and professional business of such trust or other estate, then the said Company, in the event of their undertaking any such trust or business, shall employ such solicitor accordingly; and such solicitor shall in such case be deemed and taken to be the solicitor of the said Company in any such trust or business as aforesaid, and shall not be removed without an order of the Supreme Court or a judge thereof, upon the application of the said Company or of any person interested in such estate, upon such cause being shown as the said court or judge shall deem sufficient; and, in case any such order shall be made, the court or judge may appoint the solicitors of the said Company to act as solicitors to such trust or business.

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Testators and others may appoint their own solicitor.

22 Nothing in this Act contained shall be deemed to give to the said Company any *locus standi* to oppose the granting of similar powers to those conferred upon the same Company by the 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.

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

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

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

24 The judges of the Supreme Court are hereby authorised to make such orders as from time to time seem necessary for better carrying the provisions of this Act into effect, and for regulating the fees and allowances to be paid and allowed to all officers of the said court in respect of the matters to which this Act relates.

Court may make general orders.

25 The said court or a judge thereof shall have full power and discretion to make such order as may be thought fit respecting the costs, charges, and expenses of the said Company or of any of the parties of and incidental to any application or proceeding whatsoever under this Act, and also to order by and to whom, and out of what estate, if any, such costs, charges, and expenses shall be paid.

Costs.

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SCHEDULE.

Section 20.

THE EQUITY TRUSTEES COMPANY OF TASMANIA
LIMITED.

I, _____, do solemnly and sincerely declare—

That the liability of members is limited.

That the capital of the Company is _____ divided into _____ shares
of _____ each.

That the number of shares issued is _____

That calls to the amount of _____ Pounds per share have been
made, under which the sum of _____ Pounds has been
received.

That the liabilities of the Company on the last day of _____ last
were—

Debts owing to sundry persons by the Company; namely—

On judgment

On specialty

On notes or bills

On simple contracts

On estimated liabilities

That the assets of the Company on that day were—

Government securities.

Bills of exchange and promissory notes.

Cash at bankers.

Other securities.

And I make this solemn declaration by virtue of Section 132 of the
Evidence Act, 1910.