

This PRIVATE BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

W. L. S. COOPER,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 4th December, 1924.*

New South Wales.



ANNO QUINTO DECIMO

GEORGI V REGIS.

An Act to confer powers upon Executor Trustee
and Agency Company of South Australia,
Limited.

WHEREAS a certain company styled "Executor Trustee and Agency Company of South Australia, Limited" (hereinafter referred to as the company), formed and registered under the provisions of the Companies Acts in force in the State of South Australia is about to be duly registered in this State under the provisions of the Companies (Amendment) Act, 1906, and the Companies (Amendment) Act, 1907, with a capital of five hundred thousand pounds, divisible into five

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five hundred thousand shares of one pound each, for the purpose of undertaking the duties of such offices as aforesaid for a commission: And whereas the company has now been entrusted with the administration of
 5 estates comprising assets in this State and in the State of South Australia and in other States: And whereas it is expedient that the necessary powers should be conferred upon the company in order to enable it to act as executor, administrator, or administrator with the will
 10 annexed, trustee, receiver, committee of the estates of persons of unsound mind, guardian of the estates of infants, agent under power of attorney or otherwise, liquidator trustee in bankruptcy or of any assignment under the law relating to bankruptcy, and to perform
 15 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 King's Most Excellent Majesty, by and
 20 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
 25 named, either alone or jointly with any other corporation or any person, 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 act as executor, and to apply for and obtain probate of the
 30 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
 35 of any testator annexed of the estate of such testator to authorise the company, either alone or jointly with any other corporation or any person, to apply for and to obtain letters of administration with the will annexed, which may be granted to the company upon its own
 40 application when so authorised.

3.

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3. Any person or persons 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
 5 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
 10 when so authorised unless the testator shall by his will have expressed his desire that the office of executor should not be delegated, or that the said company should not act in the trust of his will.

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

4. It shall be lawful for any person or persons
 15 entitled to obtain letters of administration of the estate of any intestate to authorise the company to apply for such letters of administration, either alone or jointly with any other corporation, or any person or persons so entitled to obtain such letters of administration, and
 20 administration of the estate of the intestate may be granted to the company, either alone or jointly as aforesaid, upon its own application when so authorised.

Persons entitled to obtain letters of administration may authorise the company to do so.

5. It shall be lawful for the company, where the administration of any estate with or without the will
 25 annexed has been granted to it, either alone or jointly with any other corporation or any person, to do and perform all acts and duties which belong to the office of the administrator, or administrator with the will annexed, as the case may be, notwithstanding its
 30 incorporation.

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

6. 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 manager, assistant manager, acting manager, or secretary, or by
 35 such other officer of the company as may from time to time be appointed by the board of directors for that purpose, 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
 40 probate or letters of administration.

Court to act on affidavit of manager, &c., on application for probate or administration.

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7. 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 State as the directors of the company may select, in the name of the Treasurer of the State 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.

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

8. (1) In all cases where any court of justice or judge thereof or person has power to appoint any person as—

- (a) trustee; or
- (b) receiver; or
- (c) committee or manager of the estate of an insane person, insane patient, or incapable person, within the meaning of the Lunacy Act of 1898; or
- (d) guardian of the estate of an infant,

the company may be so appointed.

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

(2) (a) Subject as hereinafter provided the company may be appointed or may continue to act as sole trustee in all cases notwithstanding that it is provided by the terms of the instrument (if any) creating the trust or of any power or otherwise that there shall be more than one trustee to perform the trust.

(b) Where the company and one or more individuals are co-trustees, any one or more of such individuals may retire, and the company shall for the purposes

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purposes of any Act now or hereafter in force relating to the retirement of trustees and the vesting of the trust property be deemed to be equivalent to two trustees.

(3) The company shall not be appointed in any case in which the instrument creating the trust or power forbids the appointment of the company.

(4) The company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to the company or that the company shall not be appointed or act as sole trustee.

(5) In every case in which the company is appointed or acts in any of the offices in subsection one hereof mentioned all the capital of the company, both paid and unpaid, and all other assets of the company and the directors, manager, and assistant manager thereof and their respective estates shall be liable for the proper discharge of the duties of such office.

(6) No bond, recognizance, or other security for the proper discharge of such duties shall be required to be given by or on behalf of the company.

9. (1) In all cases where before the passing of this Act the company was appointed new trustee in place of more than one trustee previously filling the office, such appointment shall be deemed to have been and to be as valid and effectual as if this Act had then been passed.

Validation of
prior appoint-
ments of
company as
sole trustee.

(2) In all cases where before the passing of this Act the company upon the retirement of one or more trustees continues to act as sole trustee, the company shall be deemed to have been and to be entitled to act as sole trustee.

(3) The trustees in whose place the company was so appointed or upon whose retirement the company continued to act as sole trustee, shall be deemed to have been and to be discharged from the trust.

10. (1) The company shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual.

Company
may hold
property
as joint
tenant.

(2) Where the company and an individual, or the company and another body corporate, become entitled to

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to any property under circumstances or by virtue of any instrument which, if the company or other body corporate had been an individual, would have created a joint tenancy, they shall be entitled to the property as
 5 joint tenants.

(3) Where the company or other body corporate is a joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant.

11. Where any property is now or hereafter becomes
 10 vested in the company and an individual, or in the company and another body corporate, to the intent that they should hold the same jointly in any fiduciary capacity, or as mortgagees, they shall be deemed to be joint
 15 tenants thereof, and not tenants in common unless otherwise expressly provided.

Property
vested in
company and
another as
trustees, &c.,
to be held on
joint tenancy.

12. It shall be lawful for the company to act, either
 alone or jointly with any other corporation or any person,
 as attorney, whenever it shall be appointed by deed
 attorney for any person or any corporation, and all the
 20 powers conferred upon the company by any power of attorney may be exercised and carried into execution by the manager, assistant manager, acting manager, or secretary, or by such other officer of the company as may from time to time be appointed by the board of
 25 directors for that purpose, 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
 30 contained shall be deemed to authorise 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
manager, &c.

13. It shall be lawful for any executor, administrator,
 35 or trustee by deed to delegate to the company, either alone or jointly with any other corporation or any person, 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
 40 dealing with the company without notice of death or revocation

Executor,
administra-
tor, or trustee
may delegate
trusts to
company.

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revocation of authority by such executor, administrator, or trustee, be valid and effectual notwithstanding such death or revocation.

- 14.** It shall be lawful for the Supreme Court or any judge thereof sitting in its equity or probate 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, either alone or jointly with any other corporation or any person, 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 manager, assistant manager, acting manager, and the directors and their respective estates, shall be liable for the due administration of the estates of which the company shall be so appointed administrator.
- 15.** (1) In all cases in which the personal attendance of an executor, administrator, trustee, receiver, committee, or guardian is required in any court of justice or elsewhere, the company shall be entitled to make such attendance in the person of the manager, assistant manager, acting manager, or secretary, or such other officer of the company as may from time to time be appointed by the board of directors for that purpose.
- (2) All declarations 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 the manager, assistant manager, acting manager, or secretary.
- (3) In every case where the company obtains probate or letters of administration, or is appointed and acts as trustee, receiver, committee, or guardian, the manager, assistant manager, and directors in their 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

Executors or administrators, with the consent of judge, may appoint company to discharge duties.

Manager, assistant manager, acting manager, secretary, or other officer to attend and represent company.

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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 manager, assistant manager, 5 and directors had personally obtained probate or letters of administration, and had acted as executor or 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.

10 (4) Notwithstanding such personal responsibility of the said manager, assistant manager, and directors, the capital both paid and unpaid, and all other assets of the company, shall remain liable for any loss which may be occasioned by or which may happen 15 through any breach of trust or duty committed by the company or any of its officers, whether such trust or duty is implied by law or expressly conferred or imposed by the instrument under which the company acts.

(5) No person shall be appointed a director or 20 manager of the company unless he is a bona fide resident of either the State of New South Wales or the State of South Australia, and any person being a director or manager of the company who ceases to reside in either of such States shall, upon so ceasing to reside, vacate his 25 office, and such vacancy shall be filled up in the manner provided by the articles of association for filling casual vacancies.

16. The company shall be entitled to receive, in addition to all moneys properly expended by it and 30 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 35 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 40 income, received by the company as an attorney acting under power of attorney, and such commission shall be payable

Company to
be paid a
commission
on moneys
received.

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payable out of the moneys in 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
 5 as such executor, administrator, receiver, trustee, 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 any judge in equity, or judge in
 10 probate, shall be of opinion that the rate of commission charged is excessive such judge may review any such commission: Provided also that the commission charged by the company against any estate shall not exceed the amount of the published scale of charges of
 15 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 authorised.

20 **17.** 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,
 25 in the same manner as any other executor, administrator, trustee, receiver, committee, guardian, or attorney.

18. It shall be lawful for any trustee, cestui que trust, executor, legatee, administrator, next of kin, or creditor entitled to or interested in any estate which
 30 shall for the time being be under the management or control of the company, after demand in writing made to the manager, assistant manager, or acting manager of the company, for a sufficient account of the property and assets of which such estate shall consist, and of the
 35 disposal and expenditure thereof or thereout; and upon non-compliance with such demand within a reasonable time, to apply to any judge in equity or judge in probate of the Supreme Court in a summary manner upon motion after notice to the company for an account, and
 40 if the said judge shall be of opinion that no sufficient account has been rendered by the company, the said judge shall

Company may be removed from office by court.

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

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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
 5 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 orders 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
 10 judge shall seem right.

19. It shall be lawful for the said judge in equity or judge in probate, upon the making of any application under the last preceding clause, to order, in addition to or in substitution for any account to be rendered by the
 15 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
 20 all the 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 him all necessary information and all other necessary facilities for enabling him
 25 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.

20. 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
 30 said 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
 40 winding up voluntarily of the company, and the said judge

Judge may order audit in any estate committed to company.

Voluntary winding-up of company or disposal of shares may be restrained by judge.

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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.

21. If it be proved at any time to the satisfaction of
 5 any judge in equity or judge in probate that three-fourths or more of the amount of capital authorised 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
 10 make an order for the winding up of the company.

Judge may order winding up of company.

22. 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
 15 balance unpaid on every share which he may have transferred during such two years, in addition to his liability upon any such 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
 20 said balance per share in full.

Provision as to liability of directors.

23. All moneys representing the realisation of properties situate in New South Wales which form part of any estate of which at any time the company shall be executor, administrator, or trustee, and which moneys
 25 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,
 30 together with interest at current rates on fixed deposits in banks, be paid by the company into the State 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
 35 have been paid, and the 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
 40 moneys shall have been invested; and the interest payable on such debentures or stock shall be placed to the

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

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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
 5 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 any judge in equity or judge in probate directing such transfer and specifying the amount of
 10 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
 15 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
 20 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 Treasury with a statement of the reason for the delay of such payments, and if default is
 25 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 manager, assistant manager, or acting manager of the company who
 30 knowingly and wilfully authorises or permits such default shall incur the like penalty.

24. 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
 35 and trust fund to apply to any judge in equity or judge in probate, 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
 40 applications to the said court under the Trustee Act of 1898; and in all cases in which the Treasurer may see fit

Persons
entitled to
moneys in
testamentary
and trust
funds may
apply to
judge.

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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.

25. It shall be lawful for the Treasurer after demand Order for account on application of Treasurer.
 5 in writing addressed to the manager, assistant 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
 10 of unclaimed moneys shall consist, and of the disposal and expenditure thereof, of or thereout, to apply to the said 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
 15 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
 20 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
 25 shall seem right.

26. The manager, assistant manager, or acting Returns to be made by company to be filed in registered office of company and its branches.
 manager of the company shall during the months of April and October in every year during which the company carries on business, make before some justice
 30 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
 35 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
 40 every branch office or place where the business of the company is carried on, and shall be given to any member

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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 whilst such default continues, and every manager, assistant manager, or acting manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

27. Every order made by any judge in equity, or judge in probate, or any other judge under this Act, shall be subject to appeal in the same manner and under the same conditions as other orders of the said judges.

28. 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 public trustee or department or officer of the Government, or in the event of the repeal of this Act.

29. 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 the order of any judge in equity or judge in probate upon the application of the company or of any 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.

30. 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

Appeal from judge.

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

Settlors or testators may appoint their own solicitors.

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

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as it has and is subject to under its present incorporation, and this Act shall not otherwise affect the incorporation of the company.

31. Any penalty imposed by this Act may be recovered in a summary way before two or more justices of the peace. Recovery of penalties.

32. This Act shall be called and may be cited as "Executor Trustee and Agency Company of South Australia, Limited, Act, 1924." Short title of Act.

10

SCHEDULE.

Executor Trustee and Agency Company of South Australia, Limited.

I (manager, assistant manager or acting manager, as the case may be) do hereby solemnly and sincerely declare :—

That the liability of the members is limited.

15 That the capital of the company is _____ pounds, divided into _____ shares of _____ pounds each.

That the number of shares is _____

That calls to the amount of _____ have been made under which the sum of £ _____ has been received.

20 That the assets of the company other than assets held on trust on the _____ day of _____ were :—

Government securities	...	...	...	£
Bills of exchange and promissory notes	...	...	...	£
Cash at the banks	...	...	...	£
25 Other securities	...	...	...	£

Total ... £

That

Executor Trustee and Agency Company of South Australia, Limited.

That the value of the real and personal property come to the hands of the company as trustees, executors, administrators, receivers, and agents since its registration in the State of New South Wales up to and inclusive of the day of , one thousand nine hundred and , was as follows:—

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

That from the date of the registration of the company in the State of New South Wales to the , one thousand nine hundred and , the following are the amounts of—

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

Total expenditure ... £

30 That the investments and moneys held by the company upon trust on the day of , one thousand nine hundred and , were as follows:—

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

Total ... £

And I make this solemn declaration as to the matters aforesaid, conscientiously believing the same to be true, and by virtue of the 45 provisions of the Oaths Act of 1900.

Legislative Council.

1924.

A BILL

To confer powers upon Executor Trustee and
Agency Company of South Australia, Limited.

(As amended and agreed to in Select Committee.)

WHEREAS in this State it is often difficult to Preamble.
procure proper persons to undertake the
onerous and responsible duties of trustee, executor or
administrator: And whereas the deaths, resignations,
5 and absence from this State 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
57107 c 31— regularity

NOTE.—The words to be *omitted* are *ruled through*; those to be *inserted* are
printed in **black letter**.

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 "Executor 5 Trustee and Agency Company of South Australia, Limited" (hereinafter referred to as the company), formed and registered under the provisions of the Companies Acts in force in the State of South Australia is about to be duly registered in this State under the 10 provisions of the Companies (Amendment) Act, 1906, and the Companies (Amendment) Act, 1907, with a capital of five hundred thousand pounds, divisible into five hundred thousand shares of one pound each, for the purpose of undertaking the duties of such offices as 15 aforesaid for a commission: And whereas the company has now been entrusted with the administration of estates comprising assets in this State and in the State of South Australia and in other States: And whereas it is expedient that the necessary powers should be 20 conferred upon the company in order to enable it to act as executor, administrator, or administrator with the will annexed, trustee, receiver, committee of the estates of persons of unsound mind, guardian of the estates of infants, agent under power of attorney or otherwise, 25 liquidator trustee in bankruptcy or of any assignment under the law relating to bankruptcy, 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 30 expedient for the purposes aforesaid: Be it therefore enacted by the King'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, 35 as follows:—

Company
may act as
executor and
obtain
probate.

1. Whenever the company has been or shall be named, either alone or jointly with any other corporation or any person, as executor, in the last will and testament, or in the codicil to the last will and testament, of any 40 testator, it shall be lawful for the company to act as executor,

executor, and to apply for and 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.

- 5 **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 authorise the company, either alone or jointly with any other corporation or any person, to apply for and to
10 obtain letters of administration with the will annexed, which may be granted to the company upon its own application when so authorised.

Persons entitled to obtain letters of administration C.T.A. may authorise the company to do so.

- 15 **3.** Any person or persons 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
20 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 by his will have expressed his desire that the office of executor should not be delegated, or that the said company
25 should not act in the trust of his will.

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

- 30 **4.** It shall be lawful for any person or persons entitled to obtain letters of administration of the estate of any intestate to authorise the company to apply for such letters of administration, either alone or jointly with any other corporation, or any person or persons so
35 entitled to obtain such letters of administration, and administration of the estate of the intestate may be granted to the company, either alone or jointly as aforesaid, upon its own application when so authorised.

Persons entitled to obtain letters of administration may authorise the company to do so.

- 40 **5.** It shall be lawful for the company, where the administration of any estate with or without the will annexed has been granted to it, either alone or jointly with any other corporation or any person, to do and perform all acts and duties which belong to the office of the administrator, or administrator with the will annexed, as the case may be, notwithstanding its incorporation.

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

Court to act
on affidavit of
manager, &c.,
on application
for probate
or adminis-
tration.

6. 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 manager, assistant manager, acting manager, or secretary, or by such other officer of the company as may from time to time be appointed by the board of directors for that purpose, 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. 5 10

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

7. 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 State as the directors of the company may select, in the name of the Treasurer of the State 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. 15 20 25 30

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

8. (1) In all cases where any court of justice or judge thereof or person has power to appoint any person as—

- (a) trustee; or
- (b) receiver; or
- (c) committee or manager of the estate of an insane person, insane patient, or incapable person, within the meaning of the Lunacy Act of 1893; or
- (d) guardian of the estate of an infant,

the company may be so appointed. 35 40

(2)

(2) (a) Subject as hereinafter provided the company may be appointed or may continue to act as sole trustee in all cases notwithstanding that it is provided by the terms of the instrument (if any) creating the
5 trust or of any power or otherwise that there shall be more than one trustee to perform the trust.

(b) Where the company and one or more individuals are co-trustees, any one or more of such individuals may retire, and the company shall for the
10 purposes of any Act now or hereafter in force relating to the retirement of trustees and the vesting of the trust property be deemed to be equivalent to two trustees.

(3) The company shall not be appointed in any case in which the instrument creating the trust or power
15 forbids the appointment of the company.

(4) The company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to the
20 company or that the company shall not be appointed or act as sole trustee.

(5) In every case in which the company is appointed or acts in any of the offices in subsection one hereof mentioned all the capital of the company, both
25 paid and unpaid, and all other assets of the company and the directors, manager, and assistant manager thereof and their respective estates shall be liable for the proper discharge of the duties of such office.

(6) No bond, recognizance, or other security for
30 the proper discharge of such duties shall be required to be given by or on behalf of the company.

9. (1) In all cases where before the passing of this Act the company was appointed new trustee in place of
more than one trustee previously filling the office, such
35 appointment shall be deemed to have been and to be as valid and effectual as if this Act had then been passed.

Validation of
prior appoint-
ments of
company as
sole trustee.

(2) In all cases where before the passing of this Act the company upon the retirement of one or more trustees continues to act as sole trustee, the company
40 shall be deemed to have been and to be entitled to act as sole trustee.

(3)

(3) The trustees in whose place the company was so appointed or upon whose retirement the company continued to act as sole trustee, shall be deemed to have been and to be discharged from the trust.

Company
may hold
property
as joint
tenant.

10. (1) The company shall be capable of acquiring 5
and holding any property in joint tenancy in the same
manner as if it were an individual.

(2) Where the company and an individual, or the
company and another body corporate, become entitled
to any property under circumstances or by virtue of any 10
instrument which, if the company or other body
corporate had been an individual, would have created a
joint tenancy, they shall be entitled to the property as
joint tenants.

(3) Where the company or other body corporate 15
is a joint tenant of any property, then on its dissolution
the property shall devolve on the other joint tenant.

Property
vested in
company and
another as
trustees, &c.,
to be held on
joint tenancy.

11. Where any property is now or hereafter becomes
vested in the company and an individual, or in the com-
pany and another body corporate, to the intent that they 20
should hold the same jointly in any fiduciary capacity,
or as mortgagees, they shall be deemed to be joint
tenants thereof, and not tenants in common unless other-
wise expressly provided.

Company
may act
under power
of attorney by
manager, &c.

12. It shall be lawful for the company to act, either 25
alone or jointly with any other corporation or any person,
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 30
by the manager, assistant manager, acting manager, or
secretary, or by such other officer of the company as
may from time to time be appointed by the board of
directors for that purpose, or by any two of the directors
of the company; but in all cases the capital, both paid 35
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 authorise any person,
company, or corporation to confer any power upon the 40
company which cannot by law be delegated or performed
by attorney.

13.

13. It shall be lawful for any executor, administrator, or trustee by deed to delegate to the company, either alone or jointly with any other corporation or any person, 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 death or revocation of authority by such executor, administrator, or trustee, be valid and effectual notwithstanding such death or revocation.

Executor,
administra-
tor, or trustee
may delegate
trusts to
company.

14. It shall be lawful for the Supreme Court or any judge thereof sitting in its equity or probate 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, either alone or jointly with any other corporation or any person, 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 manager, assistant manager, acting manager, and the 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
administra-
tors, with the
consent of
judge, may
appoint
company to
discharge
duties.

15. (1) In all cases in which the personal attendance of an executor, administrator, trustee, receiver, committee, or guardian is required in any court of justice or elsewhere, the company shall be entitled to make such attendance in the person of the manager, assistant manager, acting manager, or secretary, or such other officer of the company as may from time to time be appointed by the board of directors for that purpose.

Manager,
assistant
manager,
acting
manager,
secretary, or
other officer
to attend and
represent
company.

(2) All declarations 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 the manager, assistant manager, acting manager, or secretary.

(3) In every case where the company obtains probate or letters of administration, or is appointed and acts

acts as trustee, receiver, committee, or guardian, the manager, assistant manager, and directors in their 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 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 manager, assistant manager, and directors had personally obtained probate or letters of administration, and had acted as executor or 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.

(4) Notwithstanding such personal responsibility of the said manager, assistant manager, and directors, the capital both paid and unpaid, and all other 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 is implied by law or expressly conferred or imposed by the instrument under which the company acts.

(5) No person shall be appointed a director or manager of the company unless he is a bona fide resident of either the State of New South Wales or the State of South Australia, and any person being a director or manager of the company who ceases to reside in either of such States 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.

16. 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

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
5 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 possession of the company representing the estate upon which the same shall be
10 chargeable, and shall be accepted by the company in full satisfaction of any claim to remuneration for acting as such executor, administrator, receiver, trustee, committee, guardian, or attorney, and no other charges beyond such commission and moneys properly expended
15 by the company shall be made or allowed: Provided that if in any estate any judge in equity, or judge in probate, shall be of opinion that the rate of commission charged is excessive such judge may review any such commission: Provided also that the commission
20 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
25 directed by a testator in his will either in addition to or in lieu of the commission hereinbefore authorised.

17. Whenever the company shall have been appointed executor, administrator, trustee, receiver, committee, guardian, or attorney, it shall be subject in all
30 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.

18. It shall be lawful for any trustee, cestui que
35 trust, executor, legatee, administrator, 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 manager, assistant manager, or acting manager of
40 the company, for a sufficient account of the property and assets of which such estate shall consist, and of the disposal

Company may be removed from office by court.

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

disposal and expenditure thereof or thereout ; and upon non-compliance with such demand within a reasonable time, to apply to any judge in equity or judge in probate 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 orders 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.

Judge may order audit in any estate committed to company.

19. It shall be lawful for the said judge in equity or judge in probate, upon the making of any application under the last preceding clause, 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 the 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 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.

Voluntary winding-up of company or disposal of shares may be restrained by judge)

20. 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

said 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
5 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
10 to the said judge to require.

21. If it be proved at any time to the satisfaction of any judge in equity or judge in probate that three-fourths or more of the amount of capital authorised by this Act to be called up has been lost by the company, it shall
15 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.

Judge may order winding up of company.

22. In the event of the company being wound up, every person who has been a director of the company at
20 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 such shares held by him at the
25 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.

Provision as to liability of directors.

23. All moneys representing the realisation of properties situate in New South Wales which form part of
30 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
35 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 State Treasury to be placed to the credit of a fund to be called
40 the testamentary and trust fund, distinguishing the particular estates in respect of which such moneys shall have

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

have been paid, and the 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 shall 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 any judge in equity or judge in probate 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 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 Treasury with a statement of 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 manager, assistant manager, or acting manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Persons entitled to moneys in testamentary and trust funds may apply to judge.

24. 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

and trust fund to apply to any judge in equity or judge in probate, 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
5 as may be in the same manner as in the case of applications to the said court under the Trustee Act of 1893; and in all cases in which the 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
10 the said judge may direct.

25. It shall be lawful for the Treasurer after demand in writing addressed to the manager, assistant manager, or acting manager of the company for a sufficient
15 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, of or thereout, to apply to the
20 said 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
25 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
30 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.

26. The manager, assistant manager, or acting manager of the company shall during the months of
35 April and 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, of the receipts, expenditure, and investments of and
40 in all estates and property held by the company in trust up to the thirty-first day of ~~March~~ **December** or thirtieth day

Returns to be
made by
company to
be filed in
registered
office of
company and
its branches.

day of ~~September~~ 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 whilst such default continues, and every manager, assistant manager, or acting manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Appeal from
judge.

27. Every order made by any judge in equity, or judge in probate, or any other judge under this Act, shall be subject to appeal in the same manner and under the same conditions as other orders of the said judges.

Act not to
preclude
other com-
panies from
applying for
similar
powers to
those con-
ferred by this
Act.

28. 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 public trustee or department or officer of the Government, or in the event of the repeal of this Act.

Settlors or
testators may
appoint their
own
solicitors.

29. 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 the order of any judge in equity or judge in probate upon the application of the company or of any person interested in the said estate upon cause shown,

shown, and then and in such case the said judge may appoint the solicitor or solicitors of the company to conduct such legal business.

30. 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.

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

31. Any penalty imposed by this Act may be recovered in a summary way before two or more justices of the peace.

Recovery of penalties.

32. This Act shall be called and may be cited as "Executor Trustee and Agency Company of South Australia, Limited, Act, 192 ."

Short title of Act.

SCHEDULE.

Executor Trustee and Agency Company of South Australia, Limited.

I (manager, assistant manager or acting manager, as the case may be) do hereby solemnly and sincerely declare :—

20 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 is

25 That calls to the amount of have been made under which the sum of £ has been received.

That the assets of the company other than assets held on trust on the day of were :—

30	Government securities	...	...	...	£
	Bills of exchange and promissory notes	...	...	...	£
	Cash at the banks	...	...	...	£
	Other securities	...	...	...	£

Total ... £

That

That the value of the real and personal property come to the hands of the company as trustees, executors, administrators, receivers, and agents since its registration in the State of New South Wales up to and inclusive of the day of , one thousand nine hundred and , was as follows :—

()					Estimated values.	
Real property	£	
Chattels real	£	
Moneys secured by mortgage of real property					£	
Moneys secured by mortgage of personal property	£	10
Unsecured debts and claims	£	
Debentures	£	
Bank shares	£	
Shares in other companies (other than bank shares)	£	15
Cash	£	
Total receipts					£	

That from the date of the registration of the company in the State of New South Wales to the , one thousand nine hundred and , 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	...	£	25
Cash applied in payment of administration expenses	...	£	
Commission retained	...	£	
Total expenditure		£	

That the investments and moneys held by the company upon trust on the day of , one thousand nine hundred and , were as follows :—

Real property	...	£	
Chattels real	...	£	
Mortgages	...	£	35
Debentures	...	£	
Bank shares	...	£	
Shares in other companies	...	£	
Money on deposit with banks and other companies	...	£	40
Cash on hand	...	£	
Total		£	

And I make this solemn declaration as to the matters aforesaid, conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act of 1900.

Legislative Council.

1924.

A BILL

To confer powers upon Executor Trustee and
Agency Company of South Australia, Limited.

[MR. J. A. BROWNE ;—30 *September*, 1924.]

WHEREAS in this State it is often difficult to procure proper persons to undertake the onerous and responsible duties of trustee, executor or administrator : And whereas the deaths, resignations, and absence from this State 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

54787 c 31—

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 "Executors Trustee and Agency Company of South Australia, Limited" (hereinafter referred to as the company), formed and registered under the provisions of the Companies Acts in force in the State of South Australia is about to be duly registered in this State under the provisions of the Companies (Amendment) Act, 1906, and the Companies (Amendment) Act, 1907, with a capital of five hundred thousand pounds, divisible into five hundred thousand shares of one pound each, for the purpose of undertaking the duties of such offices as aforesaid for a commission: And whereas the company has now been entrusted with the administration of estates comprising assets in this State and in the State of South Australia and in other States: And whereas it is expedient that the necessary powers should be conferred upon the company in order to enable it to act as executor, administrator, or administrator with the will annexed, trustee, receiver, committee of the estates of persons of unsound mind, guardian of the estates of infants, agent under power of attorney or otherwise, liquidator trustee in bankruptcy or of any assignment under the law relating to bankruptcy, 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 King'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:—

Company
may act as
executor and
obtain
probate.

1. Whenever the company has been or shall be named, either alone or jointly with any other corporation or any person, 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 act as executor,

executor, and to apply for and 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.

- 5 **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 authorise the company, either alone or jointly with any other corporation or any person, to apply for and to
10 obtain letters of administration with the will annexed, which may be granted to the company upon its own application when so authorised.

Persons entitled to obtain letters of administration C.T.A. may authorise the company to do so.

- 3.** Any person or persons named expressly or by implication as executors or executor who would be
15 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
20 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 by his will have expressed his desire that the office of executor should not be delegated, or that the said company
25 should not act in the trust of his will.

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

- 4.** It shall be lawful for any person or persons entitled to obtain letters of administration of the estate of any intestate to authorise the company to apply for such letters of administration, either alone or jointly
30 with any other corporation, or any person or persons so entitled to obtain such letters of administration, and administration of the estate of the intestate may be granted to the company, either alone or jointly as aforesaid, upon its own application when so authorised.

Persons entitled to obtain letters of administration may authorise the company to do so.

- 5.** It shall be lawful for the company, where the administration of any estate with or without the will annexed has been granted to it, either alone or jointly
35 with any other corporation or any person, to do and perform all acts and duties which belong to the office of the administrator, or administrator with the will
40 annexed, as the case may be, notwithstanding its incorporation.

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

Court to act
on affidavit of
manager, &c.,
on application
for probate
or adminis-
tration.

6. 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 manager, assistant manager, acting manager, or secretary, or by such other officer of the company as may from time to time be appointed by the board of directors for that purpose, 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. 5 10

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

7. 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 State as the directors of the company may select, in the name of the Treasurer of the State 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. 15 20 25 30

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

8. (1) In all cases where any court of justice or judge thereof or person has power to appoint any person as—
(a) trustee; or
(b) receiver; or
(c) committee or manager of the estate of an insane person, insane patient, or incapable person, within the meaning of the Lunacy Act of 1893; or
(d) guardian of the estate of an infant,
the company may be so appointed. 35 40

(2)

(2) (a) Subject as hereinafter provided the company may be appointed or may continue to act as sole trustee in all cases notwithstanding that it is provided by the terms of the instrument (if any) creating the trust or of any power or otherwise that there shall be more than one trustee to perform the trust.

(b) Where the company and one or more individuals are co-trustees, any one or more of such individuals may retire, and the company shall for the purposes of any Act now or hereafter in force relating to the retirement of trustees and the vesting of the trust property be deemed to be equivalent to two trustees.

(3) The company shall not be appointed in any case in which the instrument creating the trust or power forbids the appointment of the company.

(4) The company shall not be appointed or be entitled to act as sole trustee in any case in which the instrument creating the trust or power expressly provides that there shall be another trustee in addition to the company or that the company shall not be appointed or act as sole trustee.

(5) In every case in which the company is appointed or acts in any of the offices in subsection one hereof mentioned all the capital of the company, both paid and unpaid, and all other assets of the company and the directors, manager, and assistant manager thereof and their respective estates shall be liable for the proper discharge of the duties of such office.

(6) No bond, recognizance, or other security for the proper discharge of such duties shall be required to be given by or on behalf of the company.

9. (1) In all cases where before the passing of this Act the company was appointed new trustee in place of more than one trustee previously filling the office, such appointment shall be deemed to have been and to be as valid and effectual as if this Act had then been passed.

Validation of
prior appoint-
ments of
company as
sole trustee.

(2) In all cases where before the passing of this Act the company upon the retirement of one or more trustees continues to act as sole trustee, the company shall be deemed to have been and to be entitled to act as sole trustee.

(3)

(3) The trustees in whose place the company was so appointed or upon whose retirement the company continued to act as sole trustee, shall be deemed to have been and to be discharged from the trust.

Company
may hold
property
as joint
tenant.

10. (1) The company shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual. 5

(2) Where the company and an individual, or the company and another body corporate, become entitled to any property under circumstances or by virtue of any instrument which, if the company or other body corporate had been an individual, would have created a joint tenancy, they shall be entitled to the property as joint tenants. 10

(3) Where the company or other body corporate is a joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant. 15

Property
vested in
company and
another as
trustees, &c.,
to be held on
joint tenancy.

11. Where any property is now or hereafter becomes vested in the company and an individual, or in the company and another body corporate, to the intent that they should hold the same jointly in any fiduciary capacity, or as mortgagees, they shall be deemed to be joint tenants thereof, and not tenants in common unless otherwise expressly provided. 20

Company
may act
under power
of attorney by
manager, &c.

12. It shall be lawful for the company to act, either alone or jointly with any other corporation or any person, 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 manager, assistant manager, acting manager, or secretary, or by such other officer of the company as may from time to time be appointed by the board of directors for that purpose, 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 authorise any person, company, or corporation to confer any power upon the company which cannot by law be delegated or performed by attorney. 25 30 35 40

13.

13. It shall be lawful for any executor, administrator, or trustee by deed to delegate to the company, either alone or jointly with any other corporation or any person, 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 death 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.

14. It shall be lawful for the Supreme Court or any judge thereof sitting in its equity or probate 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, either alone or jointly with any other corporation or any person, 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 manager, assistant manager, acting manager, and the 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 judge, may appoint company to discharge duties.

15. (1) In all cases in which the personal attendance of an executor, administrator, trustee, receiver, committee, or guardian is required in any court of justice or elsewhere, the company shall be entitled to make such attendance in the person of the manager, assistant manager, acting manager, or secretary, or such other officer of the company as may from time to time be appointed by the board of directors for that purpose.

Manager, assistant manager, acting manager, secretary, or other officer to attend and represent company.

(2) All declarations 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 the manager, assistant manager, acting manager, or secretary.

(3) In every case where the company obtains probate or letters of administration, or is appointed and acts

acts as trustee, receiver, committee, or guardian, the manager, assistant manager, and directors in their 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 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 manager, assistant manager, and directors had personally obtained probate or letters of administration, and had acted as executor or 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.

(4) Notwithstanding such personal responsibility of the said manager, assistant manager, and directors, the capital both paid and unpaid, and all other 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 is implied by law or expressly conferred or imposed by the instrument under which the company acts.

(5) No person shall be appointed a director or manager of the company unless he is a bona fide resident of either the State of New South Wales or the State of South Australia, and any person being a director or manager of the company who ceases to reside in either of such States 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.

16. 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

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
5 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 possession of the company representing the estate upon which the same shall be
10 chargeable, and shall be accepted by the company in full satisfaction of any claim to remuneration for acting as such executor, administrator, receiver, trustee, committee, guardian, or attorney, and no other charges beyond such commission and moneys properly expended
15 by the company shall be made or allowed: Provided that if in any estate any judge in equity, or judge in probate, shall be of opinion that the rate of commission charged is excessive such judge may review any such commission: Provided also that the commission
20 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
25 directed by a testator in his will either in addition to or in lieu of the commission hereinbefore authorised.

17. Whenever the company shall have been appointed executor, administrator, trustee, receiver, committee, guardian, or attorney, it shall be subject in
30 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.

35 **18.** It shall be lawful for any trustee, cestui que trust, executor, legatee, administrator, 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
40 to the manager, assistant manager, or acting manager of the company, for a sufficient account of the property and

Company
may be re-
moved from
office by
court.

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

and assets of which such estate shall consist, and of the disposal and expenditure thereof or thereout; and upon non-compliance with such demand within a reasonable time, to apply to any judge in equity or judge in probate 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 orders 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.

Judge may order audit in any estate committed to company.

19. It shall be lawful for the said judge in equity or judge in probate, upon the making of any application under the last preceding clause, 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 the 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 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.

Voluntary winding-up of company or disposal of shares may be restrained by judge.

20. 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

the company voluntarily unless with the sanction of the said 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
5 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
10 application as the circumstances of the case shall appear to the said judge to require.

21. If it be proved at any time to the satisfaction of any judge in equity or judge in probate that three-fourths or more of the amount of capital authorised by this Act
15 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.

Judge may order winding up of company.

22. In the event of the company being wound up,
20 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
25 liability upon any such 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.

Provision as to liability of directors.

23. All moneys which form part of any estate of
30 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
35 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 State Treasury to be placed to the credit of a fund to be called
40 the testamentary and trust fund, distinguishing the particular estates in respect of which such moneys shall have

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

have been paid, and the 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 shall 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 any judge in equity or judge in probate 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 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 Treasury with a statement of 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 manager, assistant manager, or acting manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Persons entitled to moneys in testamentary and trust funds may apply to judge.

24. 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

and trust fund to apply to any judge in equity or judge in probate, 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
5 as may be in the same manner as in the case of applications to the said court under the Trustee Act of 1898; and in all cases in which the 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
10 the said judge may direct.

25. It shall be lawful for the Treasurer after demand in writing addressed to the manager, assistant manager, or acting manager of the company for a sufficient
15 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, of or thereout, to apply to the said judge in a summary way, upon motion after notice
20 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
25 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
30 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.

26. The manager, assistant manager, or acting manager of the company shall during the months of
35 April and 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, of the receipts, expenditure, and investments of
40 and in all estates and property held by the company in trust up to the thirty-first day of March or thirtieth day

Order for
account on
application of
Treasurer.

Returns to be
made by
company to
be filed in
registered
office of
company and
its branches.

day of September 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 whilst such default continues, and every manager, assistant manager, or acting manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty. 5 10 15

Appeal from judge.

27. Every order made by any judge in equity, or judge in probate, or any other judge under this Act, shall be subject to appeal in the same manner and under the same conditions as other orders of the said judges.

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

28. 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 public trustee or department or officer of the Government, or in the event of the repeal of this Act. 20 25 30

Settlors or testators may appoint their own solicitors.

29. 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 the order of any judge in equity or judge in probate upon the application of the company or of any person interested in the said estate upon cause shown, 35 40

shown, and then and in such case the said judge may appoint the solicitor or solicitors of the company to conduct such legal business.

30. 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.

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

31. Any penalty imposed by this Act may be recovered in a summary way before two or more justices of the peace.

Recovery of penalties.

32. This Act shall be called and may be cited as "Executor Trustee and Agency Company of South Australia, Limited, Act, 192 ."

Short title of Act.

SCHEDULE.

Executor Trustee and Agency Company of South Australia, Limited.

I (manager, assistant manager or acting manager, as the case may be) do hereby solemnly and sincerely declare :—

20 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 is

That calls to the amount of have been made under which

25 the sum of £ has been received.

That the assets of the company other than assets held on trust on the day of were :—

30	Government securities	...	...	...	£
	Bills of exchange and promissory notes	...	...	...	£
	Cash at the banks	...	...	...	£
	Other securities	...	...	...	£
Total					£

That

That the value of the real and personal property come to the hands of the company as trustees, executors, administrators, receivers, and agents since its registration in the State of New South Wales up to and inclusive of the day of , one thousand nine hundred and , was as follows :—

(	)	Estimated values.	
Real property	£	
Chattels real	£	
Moneys secured by mortgage of real property	...	£	
Moneys secured by mortgage of personal property	£	10
Unsecured debts and claims	£	
Debentures	£	
Bank shares	£	
Shares in other companies (other than bank shares)	£	15
Cash	£	
Total receipts		£	

That from the date of the registration of the company in the State of New South Wales to the , one thousand nine hundred 20 and , 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	...	£	25
Cash applied in payment of administration expenses	... ..	£
Commission retained	... ..	£
Total expenditure		£	

That the investments and moneys held by the company upon trust 30 on the day of , one thousand nine hundred and , were as follows :—

Real property	... ..	£
Chattels real	... ..	£
Mortgages	... ..	£	35
Debentures	... ..	£
Bank shares	... ..	£
Shares in other companies	... ..	£
Money on deposit with banks and other companies	... ..	£	40
Cash on hand	... ..	£
Total		£	

And I make this solemn declaration as to the matters aforesaid, conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act of 1900.