

The Perpetual Executors, Trustees, and Agency Company
PRIVATE ACT.] (W.A.), Limited. [1923.]

**THE PERPETUAL EXECUTORS, TRUS-
TEES, AND AGENCY COMPANY
(W.A.), LIMITED, ACT, 1922.**

13° GEO. V., PRIVATE ACT.

**AN ACT to confer Powers upon "The Perpetual Execu-
tors, Trustees, and Agency Company (W.A.), Limited."**

[Assented to 19th February, 1923.]

Preamble,†

WHEREAS from the uncertainty of human life and from other causes great difficulty often arises in securing the services of suitable persons for the office of trustee, executor, administrator, and other similar offices: And whereas in order to secure the more certain discharge of the duties of such offices a company has been formed and incorporated under the Companies Act, 1893, by the name of "The Perpetual Executors, Trustees, and Agency Company (W.A.), Limited," with the object among other purposes of affording persons the opportunity of obtaining the services of a permanent corporation for the performance of the duties of such offices, and thus to remove much of the uncertainty and insecurity which attend the appointment of private individuals: And whereas it is expedient to enable the said incorporated company to act as executor, administrator, administrator with the will annexed, trustee, receiver, committee of the estates and persons of persons declared of unsound mind or incapable of managing their affairs, guardian of the estates of infants, agent under power of attorney or otherwise, and as guarantor or surety, liquidator, trustee in bankruptcy, or of any assignment or composition under the law relating to, and to perform and discharge all the bankruptcy duties of such offices, and to receive remuneration therefor: And whereas it is expedient to confer upon the said company the powers and privileges hereinafter set forth in order to enable the said company the more effectually and usefully to carry out the objects sought in its incorporation: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legisla-

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tive Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

This Act shall be called and may be cited as *The Perpetual Executors, Trustees, and Agency Company (W.A.), Limited, Act, 1922.* Short title to Act.

In this Act unless the contrary intention appears— Interpretation.

“The company” means The Perpetual Executors, Trustees, and Agency Company (W.A.), Limited.

“The court” means the Supreme Court of the State of Western Australia or any Judge thereof.

“The manager” means the manager, acting manager, assistant manager, secretary, acting secretary, or assistant secretary for the time being of the company.

“Committee” means the committee under the Lunacy Act, 1903-1920, of the estate or person of a person declared of unsound mind or incapable of managing his affairs, or of an insane patient within the meaning of that Act; also a person having the care and management of the property of a person declared incapable of managing his affairs, or of an insane patient.

“Trustee in bankruptcy” includes the trustee of any assignment under the law relating to bankruptcy, insolvency, liquidation by arrangement or composition with creditors.

“Will” means will, codicil, or other testamentary writing.

“Treasurer” means the Colonial Treasurer of the State of Western Australia.

“Letters of administration” means letters of administration with or without a will annexed.

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 a 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 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. The company may act as executor, and obtain probate.

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

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 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 probate may authorise company to obtain administration with will annexed.

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 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 should not act in the trust of his will.

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

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 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.

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

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.

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

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 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 and be acted upon instead of any affidavit required by any Act of Parliament, Court, or rule of Court to be made by persons making application for probate or letters of administration.

7. In all cases in which probate or letters of administration shall be granted to the company, all the capital both paid and unpaid, and all other assets of the company, shall be liable for the proper administration of the estates committed to the company. The company shall, before obtaining any grant of probate of any will or letters of administration, invest not less than five thousand pounds of its paid up capital in the name of the Treasurer in one or more of the securities or investments hereinafter mentioned, that is to say:—In the purchase of bonds, debentures, treasury bills, or other securities issued by the Government of Western Australia. The documents and securities from time to time representing the said sum of five thousand pounds shall be deposited with the Treasurer, who shall hold the same upon trust for the company. The interest of the said investments shall belong and be payable to the company. When and so long as the said sum of five thousand pounds or such other sum as may hereafter be prescribed and required by law shall remain invested and the securities for the same be deposited as aforesaid, the court may grant letters of administration to the company without the bond required by law when administration is applied for by private persons, provided that the amount of capital to be paid up and the sum to be invested as aforesaid may be hereafter increased as Parliament by any Act to be hereafter passed may prescribe.

Assets of company to be liable for proper administration of estates, and no bond to administer to be required when £5,000 is invested in the name of the Treasurer.

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

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

- (a) trustee; or
- (b) receiver; or
- (c) committee or manager, or to have the care and management of the person or estate of an insane person, insane patient, or person declared incapable of managing his affairs within the meaning of the Lunacy Act of 1903-1920; or
- (d) guardian of the estate or person of an infant; or
- (e) trustee in bankruptcy or under the law relating to bankruptcy; or
- (f) liquidator; or
- (g) surety or guarantor,

the company may be so appointed.

(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 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.

Company may hold property as joint tenant.

9. (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.

(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.

(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.

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10. 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.

Property invested in company and another as trustees, etc., to be held on joint tenancy.

11. 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 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, 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.

Company may act under power of attorney by manager, etc.

12. 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, powers, and discretions 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.

13. It shall be lawful for any executor or administrator acting under any probate or administration whether granted before or after the passing of this Act, and any trustee, receiver, committee, or guardian of any lunatic or infant, with the approval of the court to appoint the company either alone or jointly with any other corporation or any person to perform and discharge all the acts, duties, powers, and discretions of such executor, administrator, trustee, receiver, committee, or guardian, as the case may be, and the company shall have power to perform and discharge all such acts, duties, powers, and discretions accordingly; and in every such case all the capital both paid and unpaid, and all other assets

Executors, administrators, trustees, receivers, committees, and guardians may, with consent of the court, appoint company to discharge duties for them.

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of the company shall be liable for the proper discharge of such duties, and the executor, administrator, trustee, receiver, committee, or guardian so appointing the company shall be released from liability in respect of all acts done by or omitted to be done by the company acting under such appointment.

Application for consent to be by motion.

14. Every application for the approval of the court shall be by motion, and notice of the intended application shall be advertised three times in one daily newspaper published in Perth seven days before the making thereof, and in case of an executor or administrator of a testator or intestate who died in Western Australia, a like notice shall also be advertised once in some local newspaper (if any) circulating in the district in which the testator or intestate resided at the time of his death; and the court may require any person resident in Western Australia and entitled to the immediate receipt of any of the income or *corpus* of the estate in respect of which the application is made to be served with notice thereof, and the costs of such application shall be in the discretion of the court, and may be ordered to be paid out of the estate, and such consent shall not be given in any case of a will in which the testator has expressly provided that the execution of the provisions thereof shall not be delegated or that the company shall not act therein.

Manager or other officer to attend and represent company.

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 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.

(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 and directors in their proper persons and estates shall be individually and collectively in their own proper persons responsible to the court, and be liable by process of attachment, commitment for contempt or by other process to all courts having juris-

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diction in that behalf for the proper discharge of their duties for obedience 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 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 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.

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 or management shall be committed to the company, whether as executor, administrator, trustee, receiver, committee, or guardian a commission at a rate to be fixed from time to time by the Board of Directors of the company, but not to exceed in any case two pounds ten shillings for every one hundred pounds of the *corpus* or capital value of any such estate, and five pounds for every one hundred pounds of income of any such estate received by the company, and of all moneys, whether capital or income, received by the company as an attorney acting under power of attorney or as an agent, and such commission shall be 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 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 the court shall be of opinion that the rate of commission charged is excessive such court may review and reduce 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 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 commis-

Company to be
paid a commission
on moneys,¹
received.

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sion directed by a testator in his will or a settlor or agreed to be paid by any principal either in addition to or in lieu of the commission hereinbefore authorised.

Company may be removed from office by court.

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

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

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 to the manager of the company for a sufficient account of the property 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 the court in a summary manner upon motion after notice to the company for an account, and if the said court shall be of opinion that no sufficient account has been rendered by the company, the court shall order such account to be rendered by the company as to the court shall seem just, or if the court 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 court to dismiss the application, and the court 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 court shall seem right.

Judge may order audit if any estate committed to company.

19. It shall be lawful for the court, 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 com-

pany 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 court 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 court, and it shall be lawful for any person interested in such estate, or who may have any claim in respect thereof, to apply to the court in a summary way by motion to restrain any director or any shareholder from disposing of any shares which such director or shareholder may hold in the company, or to restrain the winding up voluntarily of the company, and the court shall have power to make such order upon such application as the circumstances of the case shall appear to the court to require.

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

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

Liability of shareholders and directors.

- (a) No member shall at one time hold shares in the company amounting, when the company has issued 150,000 shares, to more than 5,000, nor, when further issues have been made, to more than one additional share beyond 5,000 for every 30 such further shares issued.
- (b) Not more than eight shillings per share shall be called up except in the event of and for the purpose of the winding up or dissolution of the company, and every member shall in such event be liable to contribute the unpaid balance of every share held by him.
- (c) In such event every person who has been a director of the company at any time within the period of two years preceding the commencement of the winding up, shall be liable for the balance unpaid on every share which he may have transferred during such two years, in addition to his liability upon any shares held by him at the commencement of

the winding up in the event of the holder of such shares being unable to pay the said balance in full.

- (d) The capital of the company shall be and remain divided into shares of one pound each, and the number of shares in the company shall not be at any time reduced to less than 50,000, and no share shall be held by or transferred to a minor.

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

22. All moneys which form part of any estate of which at any time the company shall be executor, administrator, or trustee, and which moneys shall remain in the hands of the company unclaimed by the person entitled to the same for a period of five years after the time when the same shall have become payable to such person, except where payment has been or shall be restrained 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 the testamentary and trust fund, distinguishing the particular estates in respect of which such moneys shall 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 the court 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 pay-

ments 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.

23. It shall be lawful for any person who shall be entitled to any stock, debentures, or moneys which shall at any time form part of the said testamentary and trust fund to apply to the court upon petition in a summary way for such order as is in the last preceding section referred to, and the court shall deal with such application as nearly as may be in the same manner as in the case of applications to the said court under the Trustee Act, 1900. No person shall be entitled to make any such application after the expiration of twelve years from the time when such moneys were paid to the Treasurer as aforesaid, but no time during which the person entitled to make such application shall have been an infant or *femme couverte* or of unsound mind or beyond seas shall be taken into account in estimating the said period of twelve years. 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 the said court may direct.

Persons entitled to moneys in testamentary and trust funds may apply to court within 12 years.

24. It shall be lawful for the Treasurer after demand in writing addressed to the manager of the company for a sufficient account of the property and assets of which any or every estate included in or which ought to be or to have been included in the hereinbefore mentioned statement of unclaimed moneys shall consist and of the disposal and expenditure thereof, of or thereout to apply to the court in a summary way upon motion after notice to the company for an account, and if the said court shall be of opinion that no sufficient account has been rendered by the company, the court shall order such account to be rendered by the company as to the court shall seem just, or if the court 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 court to dismiss the application, and the court shall have power in all cases to make such order as to costs either against the company or as to

Order for account on application of Treasurer.

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payment of costs out of the estate as to the court shall seem right.

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

25. The manager of the company shall during the months of March and September in every year during which the company carries on business make before some justice of the peace a declaration in the form contained in the schedule hereto, or as near thereto as circumstances will admit, and a copy of such declaration shall be 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 director or manager of the company, as the case may be, who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Appeal from judge.

26. Every order made by any court under this Act shall be subject to appeal in the same manner and under the same conditions as other orders of the court.

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

27. 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.

Settlers or testators may appoint their own solicitors.

28. Where by any settlement, will, or a settlor or testator shall direct that any practicing 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 court 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 court may appoint the solicitor or solicitors of the company to conduct such legal business.

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29. The sum of five thousand pounds, or such other sum as may be hereafter prescribed, to be invested as hereinbefore provided, shall be held by the Treasurer as a security for the due performance by the company of the duties of the offices of executor and administrator under any grant obtained in pursuance of this Act, and shall in the event of the winding up of the company be applied in satisfaction *pari passu* of any claims established by any persons entitled as beneficiaries under any probate or letters of administration granted to the company in priority to all other creditors of the company; and in addition to the said security the persons so entitled shall be at liberty to rank as ordinary creditors of the company for any balance if the said sum of five thousand pounds or such other sum as aforesaid shall be insufficient to satisfy the claims so established.

Trusts of sum of five thousand pounds.

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.

SCHEDULE.

The Perpetual Executors, Trustees and Agency Company (W.A.), Limited.

- I, _____ do solemnly and sincerely declare:—
- That the liability of the members is limited.
- That the capital of the company is £ _____ divided into—
shares of £1 each.
- That the number of shares issued is _____
- That calls to the amount of _____ per share have been
made, under which the sum of £ _____ has been received.
- That the liabilities of the company on the last day of
last were—
- Debts owing to sundry persons by the company, viz.:—
- | | |
|------------------------------------|---|
| On judgment | £ |
| On specialty | £ |
| On notes or bills | £ |
| On simple contracts | £ |
| On estimated liabilities | £ |
- That the assets of the company on that day were—
- | | |
|--|---|
| Government Securities | £ |
| Bills of Exchange and Promissory Notes | £ |
| Cash at Bankers | £ |
| Other securities | £ |

And I make this solemn declaration by virtue of Section 106 of
"The Evidence Act, 1906."