

1885.  
NEW ZEALAND.

## TRUSTEES AND EXECUTORS COMPANIES IN THE CAPE COLONY.

(PAPERS RESPECTING THEIR POWERS, OPERATIONS, ETC.)

*Presented to both Houses of the General Assembly by Command of His Excellency.*

### No. 1.

The PREMIER, New Zealand, to the PREMIER, Cape Colony.

SIR,—

Government Offices, Wellington, 1st December, 1884.

The Government of New Zealand have been informed that several trustees and executors companies exist in your colony for the management of the estates of deceased persons.

Three such companies have recently been formed here; and, for our guidance in framing proper regulations for them, we shall be very much obliged for any information you can cause to be supplied to us as to the working of the companies with you, and especially as to the limitations under which your Legislature allowed them to be formed.

The Hon. the Premier, Cape Colony.

I have, &c.,

ROBERT STOUT.

### No. 2.

The PREMIER, Cape Colony, to the PREMIER, New Zealand.

SIR,—

Office of the Premier of the Colony, Cape Town, 12th February, 1885.

I beg to acknowledge the receipt of your letter of the 1st December last, in which you ask for information as to the working of the trustees and executors companies in this colony with a view to framing proper regulations for similar associations recently formed in New Zealand.

In reply, I have the honour to state that no general Act of Parliament has been passed by the Legislature of this colony which provides for the working of these companies. Certain of them have been incorporated by special Acts, and I enclose for your information the Acts and by-laws of the following three companies: (1.) South African Association for the Administration and Settlement of Estates. (2.) Board of Executors. (3.) General Estate and Orphan Chamber.

In addition to these there are others of a purely voluntary nature, their business being conducted on certain principles laid down in the deed of settlement; as an example I forward the "Deed of Settlement of the Colonial Orphan Chamber and Trust Company."

There is a third association, the Western Province Administration and Trust Company (Limited), which, although formed on the same basis as the last-mentioned company, is registered as a limited-liability company under the provisions of the Joint-Stock Companies Limited Liability Act of 1861.

These companies have proved successful financially, and are extensively used by the public, and it would therefore seem that the principles upon which they are conducted are sound.

I have, &c.,

The Hon. the Premier, Wellington, New Zealand.

THOMAS UPINGTON.

### Enclosure 1.

AN ACT to continue Act No. 9, 1855, intituled "An Act for Incorporating the South African Association."—[Assented to 30th June, 1875.]

WHEREAS by the fifty-first section of the Act No. 9, 1855, intituled "An Act for Incorporating the South African Association," it is enacted that the said Act shall continue in force for the term or period of twenty-one years from and after the promulgation thereof, which term or period will expire on the twelfth June, one thousand eight hundred and seventy-six; and whereas it is expedient to continue the provisions of the said Act, with such alterations and amendments as have by experience been found to be desirable: And whereas for this purpose it is expedient to repeal the

Act aforesaid, as also the Act No. 9, 1868, intituled “An Act to amend the Act No. 9, 1855,” and to re-enact such of the provisions thereof as it may be fitting to re-enact, together with all necessary alterations and amendments :

BE IT THEREFORE ENACTED by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows :—

I. The Acts aforesaid, No. 9, 1855, and No. 9, 1868, are hereby respectively repealed.

II. Notwithstanding the repeal aforesaid, every right or claim of or against the said association, existing at the time of the taking effect of this Act shall survive for or against the said association, continued under this Act, and shall be judged of as if this Act had not been passed.

III. The said association shall be carried on in Cape Town under the style or title of the “South African Association for the Administration and Settlement of Estates.”

IV. The constitution and object of the said association shall be for the administration and settlement of such estates and other property as they shall be duly appointed to administer, as executors, administrators, tutors, curators, trustees, or agents, either under and by virtue of any last will or other testamentary disposition, or by virtue of any order or decree of any competent Court, or by any power of attorney or other valid instrument.

V. The capital stock of the said association shall consist of the sum of twenty-nine thousand four hundred pounds sterling, which shall be divided into eighty-four shares of three hundred and fifty pounds each.

VI. No shareholder shall be capable of holding more than one share, save and except any shareholder who shall at the taking effect of this Act be in possession of two shares.

VII. No shareholder entitled as aforesaid to hold two shares shall be capable of holding more than one share at any time, after he shall sell or assign to any person or persons either or both of his said shares.

VIII. Any shareholder wishing to sell or assign his share in the capital stock of the association shall be bound to deliver the same to the directors, to be disposed of by them, by public tender, for account and benefit of such shareholder, to such person as the said directors shall think proper, to the best advantage of the seller and the association, and the said directors shall, on such sale being effected, as the agents of such shareholder, assign and transfer the said share to the purchaser thereof by endorsement upon the certificate thereof, and thereupon such shareholder shall cease to have any claim or interest therein, provided that the said directors shall be entitled to deduct from the purchase amount a commission of one and a half per centum, together with all expenses incurred in advertising the sale of the said share.

IX. In case of the insolvency of any shareholder, the trustee of his insolvent estate shall in like manner be bound to deliver the share of such insolvent shareholder to the directors, to be disposed of by them in the manner as provided in the preceding section.

X. Any shareholder may bequeath the share or shares belonging to him at the time of his death to his surviving widow (if any) ; and such share or shares shall be regarded and registered as if assigned to such widow by endorsement upon the certificate thereof.

XI. In case any shareholder shall die without having bequeathed his share or shares to his surviving widow, then the executor or other legal representative of the estate of such deceased shareholder shall be bound as aforesaid to deliver the said share or shares to the directors, to be by them disposed of in like manner as provided in the eighth section of this Act.

XII. Any male shareholder shall have the right to demand that his name be submitted to the ballot, as a member at the then next ensuing general meeting, by giving notice to the directors to that effect at least fourteen days before the day of holding such meeting.

XIII. No person not being a shareholder shall be eligible to become a member until he shall have deposited in the hands of the directors the amount or value of the share which shall be required to constitute him, upon his election, a member, or until he shall have given security to the satisfaction of the directors that, in the event of his election, he shall pay for such share.

XIV. A general meeting of the members of the association shall be held on the last Monday in the months of January, April, July, and October, in each year, for the purpose of general business.

XV. The directors for the time being shall call a general meeting of the members of the association, whenever required so to do by a requisition, in writing, signed by not less than fifteen members, and setting forth the object for which such meeting is to be called. Such requisition shall be delivered to the secretary, at the office of the association, and the meeting thereby required shall be called by the directors within five days after the delivery of such requisition, and a notice of such meeting shall be given to each member not less than eight days before the day of meeting.

XVI. The directors may, at any time, upon a previous notice of eight days, as is in the last preceding section mentioned, call a general meeting of the members of the association for the purpose of submitting to their consideration any question or matter concerning the interests of the said association.

XVII. It shall not be competent at any general meeting, held under the provisions of either of the two preceding sections, to consider any business other than that for the consideration of which such meeting shall have been convened.

XVIII. No general meeting of members shall be constituted or be competent to enter upon any question or business whatever unless twenty members shall be present, and all questions at any general meeting shall be decided by a majority of votes.

XIX. Every general meeting duly constituted may, upon question put and carried, be adjourned till some future day to be fixed upon by such meeting.

XX. No member shall be allowed to vote by proxy, and no member present shall have more than one vote.

XXI. The president, hereinafter in the twenty-fourth section of this Act mentioned, shall, when present, preside at all general meetings, and, in his absence, the director who shall of the directors present stand highest upon the list of directors shall take the chair; and whenever it shall happen that the votes of the members shall be equally divided, then the member presiding shall, besides his individual vote, also have a casting vote.

XXII. The affairs of the association shall be intrusted to and carried on by five directors, being members of the association residing in or within ten miles of Cape Town: Provided, however, that when by death or other reason the seat of any director shall become vacant, the remaining directors shall have full power to carry on the business of the association until the board shall be again composed of five members.

XXIII. The said five directors shall annually choose from among themselves a president, who shall (and in case of his absence the director next in seniority shall) preside at all their meetings, and in case of an equality of votes the president or director so presiding shall have a casting vote.

XXIV. The following members shall be the first directors under this Act, that is to say: The Hon. James Christie, M.D., Jacobus Christoffel Overbeek, the Hon. Gilles Johannes de Korte, Gerhard Myburgh, and Isaac Horak de Villiers, of whom the said James Christie shall be president; and such directors shall remain in office until the thirtieth day of April, one thousand eight hundred and seventy-six; and thenceforth until some other directors shall be appointed in their room and stead.

XXV. Upon the thirtieth day of April, one thousand eight hundred and seventy-six, the said Jacobus Christoffel Overbeek shall go out of office as a director, and shall, unless re-elected, be replaced by another member to be chosen by the general meeting of members to be held on the last Monday in the said month of April; and upon the thirtieth day of April, one thousand eight hundred and seventy-seven, the said James Christie shall in like manner go out of office, and shall, unless re-elected, be replaced by another member to be chosen at the general meeting on the last Monday of the said last-mentioned month; and upon the thirtieth day of April, one thousand eight hundred and seventy-eight, the said Gilles Johannes de Korte shall go out of office, and shall, unless re-elected, be replaced by another member to be chosen as aforesaid; and upon the thirtieth day of April, one thousand eight hundred and seventy-nine, the said Gerhard Myburgh shall go out of office, and shall, unless re-elected, be replaced by another member to be chosen as aforesaid; and upon the thirtieth day of April, one thousand eight hundred and eighty, the said Isaac Horak de Villiers shall go out of office, and shall, unless re-elected, be replaced by another member, to be chosen as aforesaid, and in like manner the senior director shall go out of office in each year, and shall, unless re-elected, be replaced by another member to be chosen as aforesaid at the annual meeting to be held as aforesaid; provided that any member elected under and by virtue of the thirty-first section of this Act, to supply any casual vacancy, shall, for the purpose of this section, be ranked in regard to seniority in the same place as that which was filled by the director by whom the vacancy was created. Directors vacating office as aforesaid shall be eligible to be re-elected.

XXVI. No member shall be capable of being a director who shall hold any office of profit under the Colonial Government; nor shall any two members, carrying on business as copartners in any firm, or related to each other in or within the second degree of consanguinity or affinity, both be capable of being directors at the same time.

XXVII. The directors shall meet once in each week, and oftener if necessary, at the office of the association, in Cape Town, for the despatch of business, and three directors shall form a quorum, and all questions or matters which shall come before the directors shall be decided by a majority of votes of the directors present.

XXVIII. It shall and may be lawful for any two of the directors to make and execute, for and on behalf of the directors and the association, any deed, inventory, liquidation, or distribution account, or any account, act or instrument; and every such deed, inventory, account, act, and instrument shall be as valid and effectual to and for all intents and purposes as if the same had been made and executed by all the directors for the time being.

XXIX. Any director who shall cease to be a member, or who shall be absent from the board of directors for three months, except by leave of the said board, shall thereby become disqualified, and his office shall cease and become vacant: Provided that it shall not be competent for any director to sell or in any manner dispose of his share or shares, so as to cease to be a member, until he shall have obtained the consent so to do of a general meeting of the members, periodical or special, anything in the ninth section of this Act contained notwithstanding.

XXX. In case any director shall become mentally incapacitated, or in case the conduct of any director shall at any time be such that his continuance in office shall appear to at least fifteen members of the association to be prejudicial to the interests of the association, and that notice thereof shall by them be given to the directors, in writing, the directors shall forthwith call a general meeting of the members for the purpose of determining whether such director shall continue in office, upon eight days' notice being given by the said directors to the said director and to the members severally, such notice to set forth the purpose for which such meeting is called; and it shall and may be lawful for the members present at such meeting, by a majority of votes, not less in number than a majority of all the members of the association at the time being, to remove such director from his office.

XXXI. In case any director shall die or desire to resign his said office, or shall be removed as aforesaid, or be or become disqualified under or by virtue of the twenty-sixth or the twenty-ninth section of this Act, the surviving or other directors shall forthwith call a general meeting of the members for the purpose of electing a director in his place, of which meeting eight days' previous notice shall be given by the directors to the members severally, and of the purpose for which such meeting is called; and it shall and may be lawful for the members present at such meeting to elect a director in place and stead of such director, who shall continue in office until the expiration of the

period for which such director so dying, resigning, being removed, or being disqualified, had been elected, and no longer : Provided that no director shall be allowed to resign, or be capable of resigning, until the members, at some general meeting thereof, shall have consented thereto.

XXXII. The capital stock of the said association, under the provisions of this Act, shall be vested in the hands of the directors for the benefit of the association, to be by the said directors lent out on interest, upon good and sufficient security of landed or other property as to the directors shall appear most conducive to the interests of the association ; and the said capital stock shall be liable to satisfy such claims and demands as have accrued or may accrue to any person against the said association.

XXXIII. The directors shall call a special general meeting, to be held in the month of May or in the first week in June in each year, of which meeting eight days' notice shall be given to the members severally, and the directors shall lay before such meeting, for its approval—First, a balance-sheet of the books of the association ; secondly, an abstract from the balance-sheet, showing, under appropriate headings, the gross liabilities of the association, as also the capital and interests due to, and the other assets of the said association, or under its administration ; and thirdly, a detailed account of profit and loss during the past year, all which accounts shall be settled and balanced up to the last day of April in each year, and shall, previous to such meeting, be examined and compared by the auditor or auditors for the time being with the books of the association, and with the bonds and other securities in the hands of the directors, and shall, by such auditor or auditors, be attested as correct, and shall lie open for the inspection of the shareholders three days before such meeting : Provided that, in making up the accounts in this section mentioned, shareholders and members shall be allowed interest upon the book value of their shares at the rate of interest for the time being current in this colony.

XXXIV. As soon as the accounts in the last-preceding section mentioned shall have been approved by the meeting in the said section mentioned, the directors shall appropriate and divide the net profits of the association for the preceding year as exhibited by such accounts into four equal parts, whereof three parts shall form a dividend, to be divided among the members in proportion to the shares possessed by each, and the remaining part shall be set apart as a reserve fund to meet any loss that may be sustained by the association : Provided, however, that should any loss have been sustained whereby the said reserve fund shall be absorbed, and the capital stock be reduced below the aforesaid sum of twenty-nine thousand four hundred pounds sterling, then no interest and no dividend shall be paid so long as the capital stock shall remain less than the sum of twenty-nine thousand four hundred pounds sterling ; and provided also that when the said reserve fund shall amount to five thousand pounds sterling, then so long as the said fund shall not fall below such last-mentioned sum no further additions need be made thereto, and in that case the whole of the net profits (after allowing interest to shareholders, as provided in section thirty-three, shall be divided between the members in proportion to the shares possessed by each of them.

XXXV. As often as any person shall be registered as the holder of any share, then, until he shall be elected a member of the association, he shall be entitled to receive interest on the book value thereof at the rate of interest for the time being current in this colony as the only profit or interest to be derived by such shareholder.

XXXVI. It shall and may be lawful for the directors to purchase any share or shares which shall be offered, and to hold such share or shares for the benefit of the association ; and the said directors shall be entitled, in respect of such share or shares, to the same benefit and profits as any member is and shall be in respect of any share or shares held by him. And every share so purchased by the said directors shall be reported to the stated general meeting of members held next after such purchase, and shall be disposed of in such manner as such general meeting or any subsequent general meeting shall determine.

XXXVII. The members assembled at the general meeting to be held on the last Monday in April in each year shall elect one or more members, not being directors, to serve as auditor or auditors for the ensuing year.

XXXVIII. The directors may from time to time appoint a secretary, cashier, bookkeeper, and such other officers as shall, to such directors, seem to be required, at such salary as they may fix from time to time, and to suspend or dismiss such officers, or any of them, from time to time as they may think proper.

XXXIX. The members may, at any general meeting, from time to time, determine the amount of remuneration which shall be paid to the directors and auditor or auditors.

XL. An alphabetical list of the names, additions, and residences of all the shareholders in the capital stock shall be made out and laid upon the table at every general meeting of the members of the association, which list shall be filed and kept by the secretary at the office in Cape Town, where any person or persons shall, upon cause from time to time, have liberty to inspect the same.

XLI. It shall be lawful for the directors, acting for and on behalf of the association, to charge the estates and properties administered by them with such fees and charges as shall be agreed upon, or which, when the same shall not be agreed upon, shall be just and reasonable.

XLII. The said directors, by and in the name of the secretary of the South African Association for the Administration and Settlement of Estates, shall and may prosecute or defend any action for or in respect of any sum or sums of money, dues, titles, claims, or demands whatsoever of or relating to the affairs of the association, or order the discontinuance or nonsuit thereof, and shall and may compromise or submit to arbitration the matters in question or otherwise act in any manner as they shall think fit and conducive to the benefit of the said association, and shall and may, subject to the provisions of the Ordinances Nos. 40 and 73, or of any law or Act which may hereafter be enacted or then be in force in that behalf, prosecute any criminal action for any crime or offence committed against or with intent to defraud the said association, and that no action or other

proceeding shall abate, discontinue, or be rendered ineffectual by reason of the death, removal, or resignation of such secretary, but that the secretary for the time being shall always be and be deemed to be the plaintiff, defendant, or prosecutor in any such action or proceeding as the case may be; and, in like manner, the said association may be sued by and in the name of the secretary aforesaid.

XLIII. The directors are empowered and required forthwith to frame and establish all necessary by-laws, rules, or regulations as shall be necessary for the conduct of the said association and the management thereof, and as shall not be contrary to this Act or any other law: Provided, however, that all such by-laws, rules, and regulations shall be laid before the next ensuing general meeting of the members for their confirmation, disallowance, or amendment; and in the event of such by-laws, rules, and regulations being confirmed, with or without amendment, the same shall continue in force until they shall be repealed or amended by any subsequent general meeting, of which meeting and the object thereof not less than fourteen days' previous notice shall be given to the several members, which notice the said directors may give, when and as often as they shall think fit, and which notice the said directors shall be bound to give, when and as often as any three members shall, in writing, inform the secretary to the association of their intention to move, at the next general meeting competent to entertain the question, that such by-laws, rules, and regulations, or any of them, which such members specify, shall be repealed or amended: And as often as any such meeting shall repeal or amend any by-law, rule, or regulation, the same shall be repealed or amended accordingly. And all such by-laws, rules, and regulations which shall in way relate to the public business of the association or to the charges to be made in respect thereof shall, within three weeks after the same shall have been passed or amended, be published in the *Government Gazette* of this colony, and, when so published, shall have the same force and effect as if therein inserted.

XLIV. The association hereby incorporated shall have a common seal for the use of the said association in transacting the business thereof, which seal shall be under the care and custody of the directors.

XLV. The association hereby incorporated shall continue to exist so long as there shall remain so many as thirty members; but it shall and may be lawful for the whole of the members at any time, by their unanimous vote at a general meeting duly held, and whereof one month's notice shall have been given by the directors to the several members residing within the colony, to declare that the said association shall be dissolved, whereupon the same shall be dissolved accordingly, in such manner that the said association shall not afterwards enter upon the administration of any estate or property; or, should the members be at any time reduced to twenty-nine or less, and three months thereafter elapse without the election of any new member, so as to compose thirty members at the least, the said association shall be deemed to be in like manner dissolved: Provided nevertheless in either event the members of the association at such time being shall continue to administer such estates as they shall have previously entered upon until the same shall be finally settled; and provided that the capital stock of the said association shall remain vested in the directors then being or thereafter to be elected by the members until such estates and property shall be finally administered and settled.

XLVI. In the construction of this Act, as often as months are mentioned, the same shall mean calendar months: and when a notice of a certain number of days is mentioned, the same shall mean clear days. and unless there be something in the subject or context repugnant to such construction, words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and the masculine gender shall include females as males.

XLVII. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all Judges, Magistrates, and others without being specially pleaded.

XLVIII. This Act shall commence and take effect from and after the fifteenth day of April, one thousand eight hundred and seventy-six, and shall continue in force for the term or period of twenty-one years thereafter.

## Enclosure 2.

AN ACT for the Regulation of the Affairs of the Board of Executors. (No. 17, 1859.)

(Published in the *Government Gazette* of 12th July, 1859.)

WHEREAS certain persons did, by a deed bearing date at Cape Town, in this Colony of the Cape of Good Hope, the twenty-second day of August, one thousand eight hundred and thirty-eight, enter into a contract of copartnership for the purpose of administering such property and estates as they might lawfully be appointed to, as executors, administrators, tutors, or curators; and whereas a certain ordinance was duly made and passed in the said colony (No. 8, 1839), and entitled "Ordinance for enabling the Board of Executors to sue and be sued in the name of their Secretary;" and whereas the joint stock or capital sum of ten thousand pounds sterling, mentioned in the preamble of the said ordinance, divided into fifty shares at the time of passing the said ordinance, was vested in the directors of the said Board of Executors, to serve as an available fund to satisfy any claim or demand which any persons might have upon the copartnership, has since been annually increased according to the provisions in the said deed contained, and now amounts to the sum of sixteen thousand five hundred pounds, and the number of shares has in accordance with the said provisions been increased to sixty: And whereas the said ordinance will expire on the first day of May, one thousand eight hundred and sixty: And whereas the following are the persons who now constitute the shareholders of the said Board, that is to say: . . . And whereas the said shareholders did, at a meeting duly held upon the twenty-eighth day of March last past, resolve that the said deed should become void on the first day of October, one thousand eight hundred and

fifty-nine, and a new deed should be framed, which should embrace the provisions of the first-mentioned deed, and certain alterations which have from time to time been made in and to the said deed, which resolutions were confirmed by the shareholders at a meeting duly held upon the first day of April, and which deed has been duly adopted, and will come into force on, and be the deed of the said company from and after, the first day of October, one thousand eight hundred and fifty-nine: And whereas the said persons have applied for an Act to incorporate the said Board of Executors, as constituted under the said last-mentioned deed; and in order the better to enable them to carry the said objects into effect—to take effect from and after the said first day of October, one thousand eight hundred and fifty-nine:

BE IT THEREFORE ENACTED by the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly, that it shall and may be lawful for the said persons, and such other as may become entitled to the privileges of this Act under the provisions of the said deed, to be and continue joint stock proprietors of the said sum of sixteen thousand five hundred pounds, and of all such sums as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of "The Board of Executors."

II. A copy of the said deed, duly authenticated by the secretary of the said Board of Executors appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope within one month after the passing of this Act; and, in like manner, a return of the names of the several persons at the time being members of the said Board of Executors, with their respective places of abode, and the name and place of abode of the chairman and of each director thereof, and of the secretary thereof, in the same manner authenticated, shall be at the same time filed in the said office.

III. A copy of all alterations in, or additions to, the said deed which may at any time be made in conformity with the provisions therein contained shall, within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed in the office of the said Registrar.

IV. Whenever the transfer of any share in the said copartnership or company shall be made, a return, in like manner authenticated, shall, within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer, the name and place of abode of the person to whom or in whose behalf such transfer is made.

V. A return, in like manner authenticated, shall, from time to time as occasion shall render it necessary, be filed in the office of the said Registrar of the name and place of abode of any person who shall have been appointed chairman, director, or secretary, in place of any former chairman, director, or secretary, within one month after such appointment shall have been made.

VI. A copy made from the copy of the said deed, or, if any alteration on, or addition thereto, which may have been made and filed as aforesaid; that a copy of any such return of any such chairman, director, secretary, or member, certified under the hands of the Registrar of the Supreme Court, shall, in all proceedings, civil or criminal, be received in evidence or proof of such deed, or of any such alteration or addition as aforesaid, or of the authority of the officer named in any such return, and also of the fact that all persons therein named as members were such at the date of such return.

VII. All appointments under and by virtue of any last will and testament, codicil, or of any deed or Act which shall have been at any time previous to the passing of this Act, or which shall hereafter be duly made and executed, of the directors of the Board of Executors, or of the secretary of the Board of Executors, as executors, administrators, tutors, curators, or agents, or as executor, administrator, tutor, curator, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the Board of Executors hereby constituted.

VIII. In all actions, suits, and proceedings, whether civil or military, the evidence of any person, being a member of the said Board of Executors, shall be admissible in like manner as if such person were not a member thereof.

IX. All actions and suits, and all other proceedings at law, to be commenced or instituted for and on behalf of the said Board of Executors against any person or persons, bodies politic or corporate, or others (whether member of the said Board of Executors or otherwise), for recovering any debts, or enforcing any claims or demands due to the said Board of Executors, or for any other matter relating to the concerns of the said Board of Executors, shall, and lawfully may, after the passing of this Act, be commenced or instituted and prosecuted to a final judgment or sentence in the name of the secretary of the Board of Executors as the nominal plaintiff, applicant, or petitioner for and on behalf of the said Board of Executors; and shall and lawfully may, subject to the provisions of any Act, law, or ordinance which may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against or with intent to defraud the said Board of Executors, or the members thereof jointly, and that no action or other proceeding shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such secretary; but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such action, suit, or other proceedings, as the case may be; and that all actions and suits, and proceedings at law, to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said Board of Executors or otherwise, against the said Board of Executors, or against the said members thereof jointly, shall and lawfully may be commenced, instituted, and prosecuted to a final judgment or sentence against the said secretary of the said Board of Executors, as the nominal defendant or respondent for and on behalf of the said Board of Executors, or for the members of the said Board of Executors aforesaid, and not against the Board of Executors, or against the members or any of them.

X. It shall and may be lawful for the secretary of the said Board of Executors to bring and maintain any action, suit, or other proceeding at law against any person being an officer or member of the said Board of Executors, for or on account of any claim or demand which the said Board of Executors may have against such person, in like manner as if he were not an officer or member thereof.

XI. It shall and may be lawful for any person being an officer or member of the said Board of Executors to bring and maintain any action, suit, or other proceeding at law against the secretary of the said Board of Executors, for or on account of any claim or demand which he may have against the said Board of Executors, in like manner as if such person were not a member of the said Board of Executors.

XII. No claim or demand which any member of the said Board of Executors may have in respect of his share of the capital stock of the said copartnership, or of any dividends, interests, or profits payable in respect of such shares, shall be capable of being set off; and no claim in reconvention shall be brought on account of any such share, or dividends, or profits, against any demand which the said Board of Executors may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interests, or profits payable in respect thereof.

XIII. It shall and may be lawful for any two directors of the said Board of Executors to execute any bond or other act, for and on behalf of the said Board of Executors, to draw up and execute any inventory or liquidation, distribution, or other account; and all such bonds, acts, inventories, and accounts so executed shall be equally valid as if the same had been done and executed by every one of the members thereof.

XIV. The said ordinance shall cease to be of any force and effect from and after the said first day of October, one thousand eight hundred and fifty-nine.

XV. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of by all Judges, Magistrates, and others, without being specially pleaded.

Given at Government House, this eighth of July, one thousand eight hundred and fifty-nine.

By command of His Excellency the Governor,

RAWSON W. RAWSON,  
Colonial Secretary.

### Enclosure 3.

AN ACT for the Regulation of the Affairs of the General Estate and Orphan Chamber.

WHEREAS certain persons did, by a deed bearing date at Cape Town, in this Colony of the Cape of Good Hope, the ninth day of March, one thousand eight hundred and fifty-six, enter into a contract of copartnership for the purpose of administering all such property and estates as they might be lawfully appointed to as executors, administrators, tutors or curators, and trustees under the style or title of, in English, "The General Estate and Orphan Chamber," and in Dutch, "De Algemeene Boedel en Weeskamer": And whereas the joint stock or capital sum of twenty thousand pounds sterling mentioned in the said deed, divided into one hundred shares, was vested in certain trustees appointed from the directors of the said General Estate and Orphan Chamber, to serve as an available fund to satisfy any claim or demand which any person might have upon the said copartnership, has since been annually increased according to the provisions in the said deed contained, and now amounts to the sum of twenty thousand five hundred and seventy-eight pounds: And whereas the following are the persons who now constitute the shareholders of the said Chamber, that is to say: . . . And whereas under the provisions of the said deed the directors are authorized and empowered to obtain an Act to incorporate the said General Estate and Orphan Chamber, and in order the better to enable them to carry the said object into effect:

BE IT THEREFORE ENACTED by the Governor, by and with the advice and consent of the Legislative Council and the House of Assembly, that it shall and may be lawful for the said persons and such others as may become entitled to the privileges of this Act, under the provisions of the said deed, to be and continue joint-stock proprietors of the said sum of twenty thousand five hundred and seventy-eight pounds, and of all such sums as they may hereafter acquire under the provisions of the said deed, and to constitute and be a company for the purposes before mentioned, to be carried on under the style or firm of "The General Estate and Orphan Chamber."

II. A copy of the said deed, duly authenticated by the secretary of the said General Estate and Orphan Chamber appointed under the provisions of the said deed, shall be filed in the office of the Registrar of the Supreme Court of this Colony of the Cape of Good Hope within one month after the passing of this Act; and in like manner a return of the names of the several persons at the time being members of the said General Estate and Orphan Chamber, with their respective places of abode, and the name and place of abode of the chairman and of each director thereof and of the secretary thereof, in the same manner authenticated, shall be at the same time filed in the said office.

III. A copy of all alterations in or additions to the said deed which may at any time be made in conformity with the provisions therein contained shall, within one month after any such alterations or additions shall have been duly made, in like manner authenticated, be in like manner filed in the office of the said Registrar.

IV. Whenever the transfer of any share in the said copartnership or company shall be made, a return in like manner authenticated shall, within one month after such transfer shall have been made, be in like manner filed in the office of the said Registrar, and which return shall contain the date of such transfer, the name and place of abode of the person to whom or in whose behalf such transfer is made.



V. A return in like manner authenticated shall from time to time, as occasion shall render it necessary, be filed in the office of the said Registrar of the name and place of abode of any person who shall have been appointed chairman, director, or secretary, within one month after such appointment shall have been made.

VI. A copy made from the said deed and of any alteration in or addition thereto which may have been made and filed as aforesaid, and a copy of any such return of any such chairman, director, secretary, or members, certified under the hand of the Registrar of the Supreme Court, shall in all proceedings, civil or criminal, be received in evidence or proof of such deed and of any such alteration or addition as aforesaid, and of the authority of the officer named in any such return, and also of the fact that all persons therein named as members were such at the date of such return.

VII. All appointments under and by virtue of any last will and testament, codicil, or of any deed or act which shall have been at any time previous to the passing of this Act, or which shall hereafter be duly made and executed, of the directors of the General Estate and Orphan Chamber, or of the secretary of the General Estate and Orphan Chamber, as executors, administrators, tutors, curators, or agents, or as executor, administrator, tutor, or agent, as the case may be, shall be deemed and taken to be a valid appointment of the General Estate and Orphan Chamber hereby constituted.

VIII. In all actions, suits, and proceedings, whether civil or criminal, the evidence of any person being a member of the said General Estate and Orphan Chamber shall be admissible in like manner as if such person were not a member thereof.

IX. All actions and suits and all other proceedings at law to be commenced or instituted for and on behalf of the said General Estate and Orphan Chamber against any person or persons, bodies politic or corporate, or others (whether members of the said General Estate and Orphan Chamber or otherwise), for recovering any debts or enforcing any claims or demands due to the said General Estate and Orphan Chamber, or for any other matter relating to the concerns of the said General Estate and Orphan Chamber, shall and lawfully may after the passing of this Act be commenced or instituted and prosecuted to a final judgment or sentence in the name of the secretary of the General Estate and Orphan Chamber as the nominal plaintiff, applicant, or petitioner, for and on behalf of the said General Estate and Orphan Chamber, and shall and lawfully may, subject to the provisions of any Act, law, or ordinance which may be in force, or which may hereafter be enacted on that behalf, prosecute any criminal action for any fraud, crime, or offence committed against or with intent to defraud the said General Estate and Orphan Chamber, or the members thereof jointly; and that no action or other proceedings shall abate, discontinue, or be rendered ineffectual by reason of the death or resignation of such secretary, but the secretary for the time being shall always be deemed to be the plaintiff, applicant, petitioner, or prosecutor in any such action, suit, or other proceedings, as the case may be; and that all actions and suits and proceedings at law to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of the said General Estate and Orphan Chamber or otherwise, against the said General Estate and Orphan Chamber, or against the said members thereof jointly, shall and lawfully may be commenced, instituted, and prosecuted to a final judgment or sentence against the said secretary of the General Estate and Orphan Chamber, as the nominal defendant or respondent for and on behalf of the said General Estate and Orphan Chamber, or for the members of the said General Estate and Orphan Chamber aforesaid, and not against the General Estate and Orphan Chamber, or against the members or any of them.

X. It shall and may be lawful for the secretary of the said General Estate and Orphan Chamber to bring and maintain any action, suit, or other proceeding at law against any person being an officer or member of the said General Estate and Orphan Chamber for or on account of any claim or demand which the said General Estate and Orphan Chamber may have against such person, in like manner as if he were not an officer or member thereof.

XI. It shall and may be lawful for any person being an officer or member of the said General Estate and Orphan Chamber to bring and maintain any action, suit, or other proceeding at law against the secretary of the said General Estate and Orphan Chamber for or on account of any claim or demand which he may have against the said General Estate and Orphan Chamber, in like manner as if such person were not a member of the said General Estate and Orphan Chamber.

XII. No claim or demand which any member of the said General Estate and Orphan Chamber may have in respect of his share of the capital stock of the said copartnership, or of any dividends, interests, or profits payable in respect of such shares, shall be capable of being set off; and no claim in reconvention shall be brought on account of any such share or dividends or profits against any demand which the said General Estate and Orphan Chamber may have against such member on account of any other matter or thing whatsoever; but all proceedings in respect of such other matter or thing may be carried on as if no claim or demand existed in respect of such capital stock, or of any dividends, interests, or profits payable in respect thereof.

XIII. It shall and may be lawful for any two directors of the General Estate and Orphan Chamber to execute any bond or other act for and on behalf of the said General Estate and Orphan Chamber, to draw up and execute any inventory or liquidation, distribution, or other account: and all such bonds, acts, inventories, and accounts so executed shall be equally valid as if the same had been done and executed by every one of the members thereof.

XIV. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of by all Judges, Magistrates, and others, without being specially pleaded.

#### Enclosure 4.

AN ACT to Limit the Liability of Members of certain Joint-stock Companies.

WHEREAS it is expedient to enable members of certain joint-stock companies to limit the liability for the debts and engagements of such companies to which they are or may be subject:



BE IT ENACTED by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, as follows:—

I. The term “joint-stock company” in this Act shall mean every partnership whereof the capital is divided, or agreed to be divided, into shares, and so as to be transferable without the express consent of all the partners; and also every partnership which at its formation, or by subsequent admission, shall consist of more than twenty-five members: Provided, however, that nothing in this Act contained shall apply to any joint-stock company formed for the purpose of banking.

II. Any joint-stock company may obtain a certificate of registration, with limited liability, from the Registrar of Deeds of the colony, upon complying with the conditions following, that is to say:—

- (1.) The directors, or provisional directors, shall in their application to the Registrar of Deeds for such registration state that such company is to be formed with limited liability.
- (2.) The word “limited” shall be the last word of the name of the company.
- (3.) The deed of settlement shall contain a statement to the effect that the company is formed with limited liability.
- (4.) The deed of settlement shall be executed by shareholders, not less than twenty-five in number, holding shares to the amount in the aggregate of not less than three-fourths of the nominal capital of the company, and there shall have been paid up by each of such shareholders, on account of his shares, not less than ten pounds per centum.
- (5.) The payment of the above percentage shall be acknowledged in, or indorsed on, the deed of settlement, and the fact of the same having been *bonâ fide* so paid shall be verified by a declaration of the directors, or provisional directors, or any two of them, made before a Justice of the Peace, under the provisions and penalties of Ordinance No. 6, 1845, for “substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits;” and a true copy of such deed of settlement, and of the names of all the persons who shall at the time the company applies for a certificate of registration with limited liability hold shares in the company, with their places of residence and the number of shares held by each, attested as such true copy by a declaration of the directors or provisional directors, or any two of them, made before a Justice of the Peace, under the provisions and penalties of the said Ordinance No. 6, of 1845, shall be lodged with the said Registrar of Deeds, to be kept by him for future reference.

And upon such conditions being complied with, and such other matters and things done, the Registrar of Deeds shall grant a certificate of registration with limited liability to any such company.

III. Any joint-stock company, except as aforesaid, already established may obtain a certificate of registration, with limited liability, in manner and subject to the conditions following, that is to say. The directors of such company may, with the consent of not less than three-fourths in number and value of its shareholders, who may be present personally or by proxy (where proxies are allowed by the deed of settlement), at any general meeting summoned for that purpose by a notice of not less than six weeks in the *Government Gazette*, and in some one or more papers published at the place, or, if there is no paper published thereat, in some one or more papers published in the town or village nearest to the place, where the business of such company is carried on, make such alteration in the name, the amount of capital paid-up, and in the deed of settlement of the company generally, as may be necessary for enabling it to comply with the conditions hereinbefore mentioned with respect to joint-stock companies seeking to obtain certificates of registration with limited liability; and upon compliance with such conditions the Registrar of Deeds shall grant to such company, by its new name, a certificate of registration, with limited liability; and thereupon all privileges and obligations hereby attached to companies with limited liability, their shareholders, directors, and officers, shall attach to the company named in such certificate, its shareholders, directors, and officers.

IV. Every company that has obtained a certificate of registration with limited liability shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, cheques, orders for money, bills of parcels, invoices, receipts, letters, and other writings used in the transaction of the business of the company.

V. If such company do not paint or affix, and keep painted or affixed, its name in the manner aforesaid, each of the directors thereof shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and if any director or other officer of the company, or any person on its behalf, use any seal purporting to be a seal of the company, whereon its name is not so engraved as aforesaid, or issue or authorize the issue of any notice, advertisement, or other official publication of such company, or of any bill of exchange, promissory note, cheque, order for money, bill of parcels, invoice, receipt, letter, or other writing used in the transaction of the business of the company, wherein its name is not mentioned in the manner aforesaid, he shall be liable to a penalty of twenty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money for the amount thereof, unless the same shall be duly paid by the company.

VI. No increase to be made in the nominal capital of any company that has obtained a certificate of registration with limited liability shall be advertised or otherwise treated as part of the capital of such company until it has been registered with the Registrar of Deeds; and no such

registration shall be made unless a deed is produced to the Registrar executed by shareholders holding shares to the amount in the aggregate of at least three-fourths of the proposed increased capital of the company, nor unless it is proved to the Registrar by such acknowledgment and declaration as hereinbefore mentioned that upon each of such shares there has been paid up by the holder thereof an amount of not less than ten pounds per centum; and if any such increase of capital as aforesaid be advertised or otherwise treated as part of the capital of the company before the same has been so registered, every director of such company shall incur a penalty of fifty pounds; and the payment of the above percentage shall be acknowledged in or indorsed on the deed so produced, and the fact of the same having been *bonâ fide* so paid shall be verified by a declaration of the directors, or any two of them, made before a Justice of the Peace under the provisions and penalties of Ordinance No. 6, 1845, for “substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits.”

VII. Within one month after the date of any new or supplementary deed of settlement, which may at any time or times during the continuance of any joint-stock company which has obtained a certificate of registration with limited liability under this Act, there shall be transmitted by the directors of every such company to the Registrar of Deeds a true copy of such new or supplementary deed of settlement, attested as such true copy in the manner aforesaid, and to be kept for future reference as aforesaid. And in the months of January and July in every year the directors of every such joint-stock company which has obtained a certificate of registration with limited liability shall make or cause to be made the following return to the Registrar of Deeds, namely:—

A return, according to the schedule hereunto annexed, and containing the particulars therein set forth, of every transfer of any share in such company which shall have been made in the share transfer list or book kept by the said company since the preceding half-yearly return, or, in the case of the first of such returns made by such company, since the registration thereof as aforesaid by the Registrar of Deeds, and also of the changes in the names of all shareholders of such company whose names shall have been changed by marriage or otherwise since the last preceding half-yearly return, or since the registration of the company by the Registrar of Deeds, as the case may be.

And if within any such period any such return be not made, then every director of such company shall be liable to a fine not exceeding twenty pounds: Provided that if any joint-stock company which has obtained a certificate as aforesaid shall have its chief place of business in any division of the colony other than Cape Town and the district thereof, and the Cape division, then a true copy of the aforesaid return, attested as such true copy in the manner aforesaid, shall, besides being transmitted to the Registrar of Deeds, be transmitted to the Civil Commissioner of such division; and in case such return shall not be so transmitted in the months aforesaid, every director of the company so failing to make such return shall be liable to a fine not exceeding twenty pounds.

VIII. If at any time any party to a transfer of a share request in writing the directors of any such company to make a return thereof, then forthwith on such request the directors shall make the same accordingly: Provided, however, that the directors may require the party making such request to defray any expense they may be put to in making the return aforesaid.

IX. Every person shall be at liberty to inspect the returns, deeds, registers, and indexes which shall be made to or kept by the said Registrar of Deeds and Civil Commissioners in pursuance of the provisions of this Act; and there shall be paid for such inspection such fees as may from time to time be appointed by the Governor, with the advice and consent of the Executive Council, in that behalf, not exceeding one shilling for each such inspection; and any person shall be at liberty to require a copy or extract of any such return or deed, to be certified by the said Registrar of Deeds; and there shall be paid for such certified copy or extract such fee as the Governor, with the advice and consent of the Executive Council, may from time to time appoint in that behalf, not exceeding ninepence for each folio of such copy or extract; and that in all Courts of the colony every such copy or extract so certified shall be received in evidence, without proof of the signature thereto, or of the seal of office affixed thereto.

X. Every company shall, on being registered, or on receiving a certificate of registration with limited liability, pay to the Registrar of Deeds the following sums:—

When the nominal capital shall be five thousand pounds or under, the sum of ten pounds.

When the nominal capital shall be above five thousand and not exceeding twenty thousand pounds, the sum of twenty pounds.

When the nominal capital shall be above twenty thousand pounds, the sum of thirty pounds.

And besides these sums and the fees hereinbefore provided to be paid, there shall be paid by such joint-stock companies registered as aforesaid such other fees in respect of any services to be performed by the Registrar of Deeds under this Act as the Governor, with the advice and consent of the Executive Council, may from time to time appoint in that behalf.

XI. The members of any joint-stock company which has so obtained a certificate of registration with limited liability, after such certificate is granted, shall not be liable (any law to the contrary notwithstanding) under any judgment, decree, or order which shall be obtained against such company, or for any debt or engagement of such company, further or otherwise than is hereinafter provided.

XII. If any execution, or other process in the nature of execution, shall have been issued against the property or effects of the company, and if there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the shareholders to the extent of the portions of their shares respectively in the capital of the company not then paid up; but no shareholder shall be liable to pay in satisfaction of any one or more such execution or other process a greater sum than shall be equal to the portion of his shares not

paid up: Provided always that no such execution shall issue against any shareholder except upon an order of the Court or of a Judge of the Court in which the action, suit, or other proceeding shall have been brought or instituted; and such Court or Judge may order execution to issue accordingly, with the reasonable cost of such application and execution, to be taxed by the taxing-officer of the said Court; and for the purpose of ascertaining the names of the shareholders and the amount of capital remaining to be paid upon their respective shares, it shall be lawful for any person entitled to any such execution at all reasonable times to inspect the register of shareholders without fee.

XIII. If any execution, or other process in the nature of execution, shall have been issued against the property or effects of any shareholder for the time being, and there cannot be found sufficient whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any former holder or holders of the shares held by such shareholder for the time being for such amount as such shareholder for the time being shall have failed to pay in satisfaction of the execution, or other process in the nature of execution, issued: Provided, however, that nothing herein contained shall be taken to render any such former holder or holders of shares aforesaid liable for any larger amount than he or they would have been liable for under the provisions of this Act if he or they had been, at the time of the issuing of such execution, or other process in the nature of execution, the holder or holders of such shares: Provided, also, that in the case of execution against any former shareholder, such shareholder shall have been a shareholder at the time when the contract or engagement for which such judgment, decree, or order may have been obtained was entered into, or became a shareholder during the time such contract or engagement was unexecuted or unsatisfied, or was a shareholder at the time of the judgment, decree, or order being obtained: Provided, further, that in no case shall execution be issued on such judgment, decree, or order against the person, property, or effects of any such former shareholder after the expiration of two years next after the return of the transfer of the shares of the person or persons sought to be charged shall have been made to the Registrar of Deeds, as provided in sections seven and eight of this Act: And provided further that the provisions of this section shall (anything in this Act to the contrary notwithstanding) apply to every joint-stock company established for the purpose of banking: Provided, however, that in no case shall execution be issued on any judgment, decree, or order against the person, property, or effects of any former shareholder in such banking company after the expiration of two years next after the shares of such former shareholder sought to be charged shall have been transferred in the books of the said company upon the approval of the directors of the said company, and the said former shareholder shall have given notice in the *Government Gazette*, and in some one or more newspapers (if there be any) published in the town or village where such banking company has its chief place of business, if such chief place of business be in any division of the colony other than Cape Town and the district thereof, and the Cape division, that he has ceased to be a shareholder in such banking company: And provided also that every such shareholder in any such banking company shall, as such former shareholder, be liable to the same amount as if this Act had never been passed.

XIV. If the directors of any such company shall declare and pay any dividend when the company is known by them to be insolvent, or any dividend the payment of which would to their knowledge render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office: Provided that the amount for which they shall be so liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall file their objection in writing with the clerk of the company, they shall be exempted from the said liability.

XV. No note or obligation given by any shareholder to the company whereof he is a shareholder, whether secured by any pledge or otherwise, shall be considered as payment of any money due from him on any share held by him.

XVI. Where any company established previous to the taking effect of this Act shall obtain a certificate of registration with limited liability, the grant of such certificate shall not prejudice or affect any right which previously to the grant of such certificate has accrued to any creditor or other person against the company in its corporate capacity, or against any person then being or having been a member of such company, but every such creditor or other person shall be entitled to all such remedies against the company in its corporate capacity, and against every person then being or having been a member of such company, as he would have been entitled to in case such certificate had not been obtained.

XVII. No alteration made by virtue of this Act in the name of any company shall prejudice or affect any right which previously to such alteration has accrued to such company as against any other company or person, or which has accrued to any other company or person as against such company, but every such company as against any other company or person, and every other company or person as against such company and the members thereof, shall be entitled to all such remedies as they or he would have been entitled to if no such alteration had been made, and no such alteration shall abate or render defective any legal proceeding pending at the time when such alteration is made.

XVIII. Every company in which the liability of the shareholders shall have been limited by any special Act passed during the present or any previous session of Parliament, or by any ordinance of any former Legislature of this colony, shall be subject to the provisions of sections four, five, six, seven, eight, nine, ten, thirteen, fourteen, fifteen, and seventeen of this Act, in so far as these provisions are not repugnant to the provisions of any such special Act or ordinance aforesaid; and the directors and other officers of every such company shall be liable to the penalties in the said sections of this Act provided in case of their neglecting or failing to comply with the provisions of the said sections. And the word "limited" shall, as is provided in the case of all joint-stock companies

coming within the operation of this Act, be the last word of the name of every such company, anything in any special Act or ordinance aforesaid to the contrary notwithstanding: Provided, however, that it shall not be necessary for any such company to receive from the Registrar of Deeds a certificate of registration with limited liability, or to pay to the said Registrar the sums mentioned in section ten to be paid by every company on being registered, or on receiving such certificate of registration with limited liability: Provided that nothing in the Ordinance No. 8, 1839, entitled "Ordinance for enabling the Board of Executors to sue and be sued in the name of their Secretary," or in the Ordinance No. 11, 1844, entitled "Ordinance to enable the Cape of Good Hope Trust and Assurance Company to be appointed by that name as Trustees or Tutors, and to sue and be sued in the name of their Secretary," or in the Act No. 9, 1855, entitled "Act for incorporating the South African Association," or in an Act passed during this present session of Parliament, entitled "An Act for incorporating the Union Fire and Marine Insurance and Trust Company, and enabling them to sue and be sued in the name of their Secretary," or in another Act passed during this present session, entitled "An Act for the regulation of the Affairs of the General Estate and Orphan Chamber," shall be taken or construed to limit the liability of the shareholders or members of any of the said companies or associations, or to bring the said companies or associations, or any of them, under any of the provisions of this Act.

XIX. This Act may be cited for all purposes as "The Joint-stock Companies' Limited Liability Act, 1861."

SCHEDULE.—(See Section vii.)  
Return, made pursuant to "The Joint-stock Companies' Limited Liability Act, 1861."  
TRANSFER OF SHARES.

Name of Company.	Business or Purpose.	Place (or Principal Place, if more than one) of Business.	
Name and Place of Abode of Person by whom Transfer is made.	Name and Place of Abode of Person to whom Transfer is made.	Distinctive Numbers of the Shares Transferred.	Date of Transfer.

SHAREHOLDERS WHOSE NAMES HAVE BECOME CHANGED BY MARRIAGE OR OTHERWISE.

Former Name.	Former Place of Abode.	Present Name.	Present Place of Abode.	Distinctive Number of Shares.

(Date.)(Signature.)  
Given at Government House, Cape Town, this 14th day of August, 1861.  
By Command of His Excellency the Governor,  
RICHARD SOUTHEY,  
Acting Colonial Secretary.

No. 3.

The PREMIER, New Zealand, to the PREMIER, Cape Colony.

SIR,—Premier's Office, Wellington, 23rd March, 1885.  
I have the honour to acknowledge the receipt of your letter of 12th February, in reply to mine of 1st December, respecting Trustees and Executors Companies and their operations in your colony, and I beg that you will accept my best thanks for the valuable information contained in your reply and its several enclosures.  
The Hon. the Premier of Cape Colony, Cape Town.I have, &c.,  
ROBERT STOUT.

No. 4.

The PREMIER to the Hon. J. N. WILSON, M.L.C.

SIR,—Premier's Office, Wellington, 20th March, 1885.  
I have the honour to acquaint you that I have this day received from the Cape of Good Hope copies of rules and Acts incorporating certain Trustees and Executors Companies, over which,

however, the Government seems to have no control more than it has over joint-stock companies. The Premier states that they have proved successful financially, and are extensively used by the public.

I quote the amount of capital and number of shareholders of three: The South African Association for the Administration and Settlement of Estates, £29,400, 84 shares of £350 each; Board of Executors, £24,000, 120 shares of £200 each; General Estate and Orphan Chamber, £20,000, 100 shares of £200 each. These are incorporated by Acts of Parliament.

There are others, I am informed, of a purely voluntary nature, their business being conducted under deeds of settlement; and yet another, called "The Western Province Administration and Trust Company (Limited)," which, although formed on the same basis as the last-mentioned, is registered as a limited liability company under "The Joint-stock Companies' Limited Liability Act, 1861."

The Hon. J. N. Wilson, M.L.C., Napier.

I have, &c.,

ROBERT STOUT.

### No. 5.

The Hon. J. N. WILSON to the PREMIER.

*Memorandum for the Hon. the Premier.*

WITH reference to the Premier's letter of the 20th March, I have the honour to submit the following observations:—

I do not think to look to the Cape Government for good legislation. The population of the country is largely of Dutch origin. The country is governed by Roman-Dutch law, and I am not aware that its legislation is of a particularly satisfactory nature. The present state of the country is not reassuring.

In England legislation has always set its face against the business of trusteeship being carried on for profit. Nearly forty years since a vigorous attempt was made to found a company for the purpose of carrying on such a business. I believe an appeal was made to Parliament to obtain an Act, but I do not think the Act went to a second reading. It was understood that the Judges were consulted, and almost unanimously were adverse. Lord St. Leonards in particular was violently opposed, as may be seen in his writings. I am not aware whether a further appeal has been made to Parliament, but, at all events, no such company is in existence in England.

After the passing of the Administration Act in New Zealand, whereby trustees are allowed a recompense for the performance of their duties, it does not appear that, on principle, a legitimate objection can be made to a company executing a trust for profit any more than to an individual. I submit, however, that any company carrying on such a business should, in the interest of the public, give satisfactory security for the performance of its trust.

There are several companies existing and carrying on trust business in New Zealand. Several, if not all, have obtained special Acts from the Parliament giving them certain powers. These companies are all registered under the Limited Liability Act, and, previous to obtaining special Acts, had been registered under the Companies Act, each with a separate memorandum of association. If these memoranda are inspected it will be seen that the operations of these companies are by no means limited to the execution of trusts, but that the companies are authorized to enter into businesses and trades of a very varied and speculative nature.

The companies in question claim to carry on their business without the restriction that the law imposes on ordinary trustees. Amongst other regulations the companies ask that, having once given security for the sum of £10,000, no further security shall be required of them in cases of administration being granted to them, no matter what the value of the estates may be. A Committee of the Legislative Council considered this question last session. I enclose a copy of their report, and of a draft Bill prepared by the Committee. The lateness of the session when the Bill was introduced prevented its being proceeded with.

The subject is one of great importance, and has not received the attention that it deserves. It may be observed, too, that any delay in dealing with the question will harden the companies now formed in claiming a vested right in the privileges granted by previous Parliaments.

Considering that the Government, in establishing the office of Public Trustee, have given to the public the guarantee of the colony to all estates and trusts committed to the care of the Public Trustee, and, by establishing strict rules for the conduct of such business, have given facility to the public for its protection, it does not seem too much to ask of the companies that they should submit to some reasonable control.

The two points that weighed most with the members of the Legislative Council were—first, that companies (as in the case of all well-managed private trusts) should keep separate accounts with a bank of each trust; second, that companies should be restricted in their investments (as in the case of private trustees) either in the public funds or on security of real estate.

31st March, 1885.

J. N. WILSON.

### No. 6.

The PREMIER to the Hon. J. N. WILSON.

SIR,—

Premier's Office, Wellington, 2nd April, 1885.

I have the honour to acknowledge the receipt of your memorandum dated 31st March relative to Trustees and Executors Companies, and to assure you that your suggestions, &c., shall receive careful consideration.

I have, &c.,

Hon. J. N. Wilson, M.L.C., &c., Napier.

ROBERT STOUT.

