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I.—*On the Desirability of Establishing by Act of Parliament a Corporate Body to act as Trustee, Executor, Administrator, etc.*

By William Lawson, LL.B. B.A., Barrister-at-law.

[Read, Monday, 21st February, 1887.]

EVERY person who dies possessed of any estate, however small, must be succeeded by an administrator, executor, or trustee, whose duty it is to administer, manage, or realize that estate in accordance with the provisions of the law, or the expressed wishes of the deceased; and during life cases are of constant occurrence in which, from necessity or expediency, or the incapacity or absence from the country of proprietors, the control of estates falls upon trustees, attorneys, agents, receivers, etc.

The time and attention requisite for the performance of a trustee's duties involve a sacrifice on the part of individuals that few care to make, especially as no remuneration can be taken, except in the few cases where the trustee is expressly permitted to charge, or the testator may have chosen to make a bequest to him in consideration of his consenting to act, a reluctance is therefore felt in asking friends to act on the one hand, and by friends on the other in refusing to act, although prudential reasons would urge, and often do compel them to decline.

The appointment of individuals as trustees, etc., is invariably accompanied by the risk of their failure from declining to act, death, incapacity, or absence, with the consequent possibility of the machinery provided for the management and disposal of estates in their charge becoming inadequate, or altogether useless, and involving the appointment of others, either by deed or by the court, at considerable expense to the estate. The difficulty individuals find in getting persons to act, whether as trustee or executor, is so great that instances would be superfluous, similar difficulties arise also where it becomes necessary for the court to appoint For example—a married woman was recently appointed a trustee by

the Chancery Division, because no one else could be got to act; again, where the assets of an intestate are but small and his next-of-kin in poor circumstances, it is hard to get anyone to act as administrator, because the requisite security is not forthcoming, and this often leads to an evasion of the law, and considerable loss to the revenue, as well as being a fruitful source of litigation between the next-of-kin *inter se*, or between the creditors, by reason of there being no legal owner of the estate. Again, under the Settled Land Act, it is often necessary before a sale can be authorized, to appoint trustees for the purposes of the Act, because there are no trustees, or because the trustees to the settlement have not a power of sale, and though the duties are not arduous, sales have often been delayed by difficulties in getting persons to act. Even when the trustee, executor, or administrator is appointed, and has consented to act, the risks and losses attendant on his appointment are often very great, whether it be that he merely neglects or mismanages the property, invests it in an unauthorized or improvident manner, or actually misappropriates it. Again, the death of one of two trustees leaves the manipulation of the trust in the hands of a single individual, who may be tempted either to lend the trust-funds to the *cestui que trusts* without adequate security, or to use them for his own purposes. No doubt the *cestui que trusts* are often to blame for this; as they will not undertake the trouble and expense of appointment of a second trustee. Insolvency is of course another risk, whether of the trustee or of an agent employed by him. Moreover, although every care may have been taken in the selection, a feeling of insecurity must exist, in the absence of any efficient means for securing the integrity and fidelity of those to whom the control of trust estates has been entrusted.

Despite the difficulties and disadvantages that have been enumerated, and many others that will suggest themselves to the readers of this paper, no alternative mode of carrying into effect the wishes of a principal, unable or unwilling to act himself, seems possible, unless we can substitute combined for individual action. This may be done either by establishing a company or corporation, or by creating a state department. There are objections to this last, especially in a country where the state has too much to do already. Such a department, however, exists in other countries—*e.g.*, in Australia, New Zealand, India, and elsewhere, and apparently works well.

In the colony of Victoria there is a Curator of Intestates' Estates. In the year 1879 letters of administration were granted in 668 cases, the estimated value being £536,120. In 219 of these cases the grant was to the curator, and the value £46,227. In 1880, out of 491 cases, representing a value of £414,000, the grants to the curator were 204, and the value £28,300. The sums received by the curator on these estates, and on others remaining over from former years, were £43,000 in 1879, and £50,000 in 1880. In the eleven years ended with 1880, the number of intestate estates dealt with by the curator was 2,395, and their estimated value £415,511; the amount received by him during the eleven years was £408,786.

In New Zealand the Public Trust Office was established by Act in 1872. The object of this department is the administration of intestate estates, the executorship of wills, and the administration of trusts under settlements and deeds. The obvious advantage of this office is that the public trustee has uninterrupted control of the business entrusted to the department, thus avoiding the loss and delay involved in the transfer of trusts, and the reappointment of trustees.

The government of the colony is responsible for the honest fulfilment of the trusts, and all investments are under control of an official board, consisting of the Colonial Treasurer, Attorney-General, Controller and Auditor-General, and Public Trustee. The property of this institution may be judged of from the following return of the cash receipts from all sources :—

1880	1881	1882	1883	1884	1885
£41,813.	£68,262.	£71,315	£90,119.	£116,136.	£195,000.

In India an official trustee was established by an Act of 1864, amended in 1874, but I have not been able to procure information as to its working. There is in India an administrator-general, and in the United States a public administrator, whose duties, so far as I have been able to ascertain them, appear to be limited to taking out administration to the effects of intestates, where there are no next-of-kin known or none willing to administer—a duty which is to some extent discharged in this country by the solicitor to the Treasury.

There is nothing corresponding to those state departments in this country as regards private trusts, but the Commissioners of Charitable Donations and Bequests fill an analogous position as regards charitable or public trusts—being empowered to take over trust funds, and so relieve the trustees from responsibility, and the charity from the recurring necessity of appointing new trustees.

Passing from the propriety of administering private trusts by the state, on which there may well be a difference of opinion, we approach the consideration of their management by a corporation, authorized by Act of Parliament. In principle and in law there can be no objection to a corporation being a trustee, though parliamentary powers may be necessary to enable it to carry out the duties in full A trust is a confidence, and in old times trustees were individuals, for a corporation could not have been seized to a use, for as it was gravely observed, it had no soul, and how then could any confidence be reposed in it? Such technical rules have of course long since ceased to operate in respect of trusts, and at the present day every body corporate is compellable in equity to carry the intention into execution. But though the Court of Chancery has ample jurisdiction to oblige a corporation to observe good faith, and property already vested in a corporate body will be administered upon the trust attached to it, yet apparently no real estate can be conveyed to a corporation upon any trust without the licence of the Crown, but there is no objection to an assignment or bequest of pure personal estate to a corporation. So also a corporation can

be an executor; for though doubts were once entertained whether a corporation could be an executor, principally because it cannot prove a will, or, at least, cannot take the oath for the due execution of the office, there are authorities in favour of the capability, and it is to be taken as now settled that on a corporation being so named, it may appoint persons, styled syndics, to receive administration unto the will annexed, who are sworn like other administrators. Thus a grant of administration was made by Sir C. Creswell to the clerk of the Dean and Chapter of Exeter, who had been appointed by a lady her executors, on his being appointed their syndic, for the purpose of taking the grant.

But legislation is necessary to enable a corporation or company —(1) to obtain probate of a will, or a direct grant of administration; (2) to take over existing trusts; (3) to make a charge for management. Attempts have been made in England to work such companies without statutory powers, but they have necessarily been unsuccessful. At least two such companies were started prior to the year 1885, the principal object being to relieve trustees and executors—one about the year 1867, the other in 1879, but both were still-born. In 1885 a similar company was started in Liverpool, and a bill for a private Act introduced in the session of that year; but it was objected to on the ground that it ought to have been a public measure, and it was therefore withdrawn. Another company was registered in Scotland last year, called "The Public Trustee Limited," with an office in London; it has, however, done but little work in Scotland and none in England. This company and others have given notice of bills for private Acts this session.

Meantime other countries have been long in advance of us in this matter. Companies of a similar nature exist in the United States, the Cape, Australia, New Zealand, and elsewhere, but all these have Acts of Parliament, or charters giving them the necessary powers referred to. For instance, the United States Trust Company of New York obtained a private Act in 1853, and there are other similar companies in different parts of the States. New Zealand has, in addition to the official system already mentioned, a private company called "The Trustees, Executors, and Agency Company, Limited," established by private Act in 1882. In Victoria a company under the same name, with a subscribed capital liability of £150,000, is specially empowered by Act of Parliament to act as executor, trustee, receiver, committee under lunacy statute, or attorney, and a power to take over trusts from existing trustees in the same way as an individual. This company paid in the first half of the year 1885 a dividend of 10 per cent., and a bonus of £5 per share, besides annually increasing the reserve fund, and its shares at present command about two hundred per cent. premium. In 1881 it paid 5 per cent, in 1882, 6 per cent., in 1883, 7½ per cent.; in 1884, 10 per cent. I have not been able to obtain any statistics as to the other companies.

The establishment of such a corporation would do much, if not all, that is practically necessary for removing the difficulties and obviating the disadvantages incident to the existing system. The holders

of offices of trust, who often themselves feel that they are, from various circumstances, without that control over the estates in their charge, which they consider necessary for their protection, and without any guarantee for the risks which they have gratuitously undertaken, will probably avail themselves of such an institution as a means to free themselves from an irksome and thankless responsibility, without injury to the estates under their care, or the trust reposed in them.

The vast increase of property in the hands of the working class, and the unsatisfactory way it is often taken care of, combined with the difficulty that class has in getting suitable trustees, to which allusion has already been made, make the establishment of such a body a matter of national importance.

In addition to ordinary trusts in the case of voluntary liquidations, landed proprietors, officers, and others going abroad, or for other reasons requiring attornies or agents, foreign capitalists desirous of holding property in this country, and in many similar instances, the services of such a company would result in a great saving of trouble and expense, and secure an efficiency of management combined with absolute privacy and security otherwise unattainable. Special provision will have to be made to secure an efficient system of auditing trust accounts relating to estates under the administration of such a company.

It has been proposed that pending the passing of an Act of Parliament, when under existing law a company cannot be appointed to any of the above offices, the company should grant bonds of caution or guarantee, for any of the company's officials who might be appointed to such offices. The officials would pay to the company the remuneration to which they might be entitled, and the company would undertake to release them of the liabilities they might incur in the performance of their duties. I may here refer to the useful function discharged by the Guarantee Society in providing receivers, agents, etc. with a means of obtaining security as adequate as any individual can give. It is evident that such company would not be subject to any of the risks incidental to the present system of individual trustees, etc., arising whether from the causes already mentioned, or from the want of the special information often essential to avoid such risks, and from inability to devote the necessary time and attention to management The charge for management would be fixed and moderate, so that every one would be able to learn on application the expense of managing an estate. To carry out this it would be necessary to insert in trust deeds, naming the company as trustees, a clause permitting it to charge, and conferring upon it the power of ordinary trustees. Trustees and others might direct that the legal business of their estates should be conducted by their own solicitors: this would meet an objection that may be raised, that the establishment of such a company would injure the interests of solicitors.

It is not within the province of this paper to point out the advantages of such a company as an investment; but if the expenses of management are moderate, and, so far as practicable, in proportion to the business done, and the greater portion of the paid up capital

is invested in government and in other undoubted securities, the return therefrom will always insure a dividend to shareholders. In addition to this source of income, the revenue derived from the business done by the company would, after making suitable provision for the formation and augmentation of a reserve fund, be divided amongst the shareholders. That a change in the law of the kind already indicated is desirable is the view entertained by such eminent authorities as Lords Selborne, Herschell, and Hobhouse, as well as by many of the leading members of both branches of the legal profession in London and elsewhere. An Act of Parliament has been suggested on the following lines:—(1) to enable companies to prove wills and obtain letters of administration; (2) to enable them to charge for management; (3) to empower the court, and with the consent of the court, persons who have power of appointing new trustees to appoint a company; (4) to make provision for official audit, publication of accounts, investment of large security funds in the hands of an official, power to deal with unreclaimed funds, and such like matters. It would be impossible to go into the details which such a measure would or might comprise. Suffice it to say, in conclusion, that the principle of such a measure is deserving of very favourable consideration by all classes of the community, as one which is calculated to benefit rich and poor alike—enabling, as it will, the principle of co operation to be applied to supplement, but not to supplant individual action, in the carrying out of those trusts and the discharge of those duties which from time to time cannot fail to fall to the lot of every member of the complex society in which we live

II.—*The Law of Divorce in Ireland.* By A. W. Samuels, Esq.

[Read, Tuesday, 10th May, 1887.]

THE law of Ireland in matrimonial matters is the old ecclesiastical law. The procedure of the court in administering that law is regulated by the Matrimonial Causes and Marriage Law Amendment Act of 1870. This Act transferred the jurisdiction of the ecclesiastical tribunals to the court then newly created, and this court in its turn has been absorbed into the High Court of Justice by the Judicature Act, and is now known as the Probate and Matrimonial Division of that court. Neither by the Act of 1870, nor by the Judicature Act, was authority conferred upon the court to grant any more extended relief than that formerly granted by the Ecclesiastical Courts. The procedure of the tribunal has been simplified, cheapened, and improved, but except in a few matters of practice, the powers of the Probate and Matrimonial Division of the High Court of Justice are as limited as ever were those of the Consistorial Court, at the time when the strictest jealousy of its