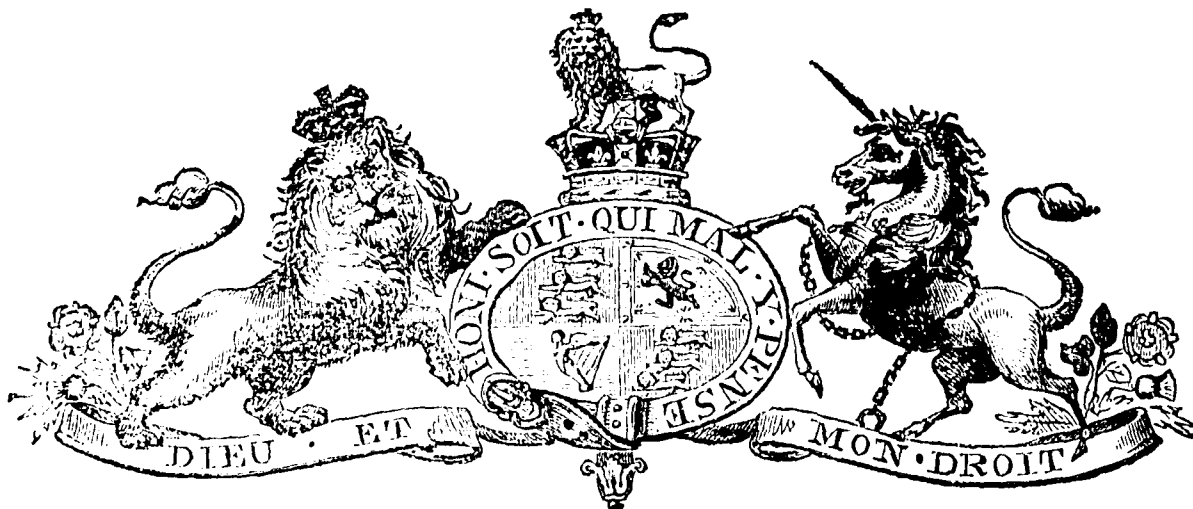


VICTORIA.



ANNO NONO

EDWARDI SEPTIMI REGIS.

No. 2212.

An Act to confer Powers upon the Bendigo and
Country Districts Trustees and Executors
Company Limited.

[14th December, 1909.]

WHEREAS from the uncertainty of human life and from other causes great difficulty often arises in securing the services of suitable persons for the office of trustee executor and other similar offices : And whereas in order to secure the more certain discharge of the duties of such offices a company has been formed and incorporated under the Companies Acts by the name of the Bendigo and Country Districts Trustees and Executors Company Limited with the object among other purposes of affording persons the opportunity of obtaining the services of a permanent corporation for the performance of the duties of such offices and thus to remove much of the uncertainty and insecurity which attend the appointment of private individuals : And whereas it is expedient to enable the said incorporated company to act as executor administrator and trustee and to perform and discharge all the duties of such offices and to receive remuneration for such duties, and also to act as guardian of any lunatic or infant as receiver and as committee of the estate under the *Lunacy Act* 1890 and as agent under power of attorney and sole guarantor or surety for any person appointed

Preamble.

appointed as administrator or appointed as receiver guardian or committee in lunacy, and to perform and discharge all the duties of such offices and to receive remuneration for such duties, and to confer upon the said company the powers and privileges hereinafter set forth in order to enable the said company the more effectually and usefully to carry out the objects sought in its incorporation: Be it therefore enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Company may act as executor and obtain probate.

1. Whenever the said company has been or shall be named executor in the last will and testament or in the codicil to the last will and testament of any testator it shall be lawful for such company to act as executor, and the said company shall be entitled to apply for and to obtain probate of the will of the testator and to perform and discharge all other the acts and duties of an executor as fully and effectually as a private individual may do when appointed executor.

Company may obtain letters of administration and act as administrator.

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

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

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

Persons entitled to administration on intestacy may authorize company to obtain administration.

4. Any person entitled to obtain administration to the estate of any intestate as wife or husband of the intestate or as his next of kin or as a creditor may instead of himself applying for administration authorize

authorize the company to apply for administration to such estate and administration to the estate of the intestate may be granted to the said company upon its own application when so authorized.

5. In all cases in which the said company is empowered under this Act to apply for probate or for letters of administration it shall be lawful for the court in which or the officer before whom such application is made to receive and act upon an affidavit made by the managing director acting managing director manager or acting manager of the company in place of any affidavit required by the said court to be made by persons making application for probate or for letters of administration.

Court to act upon affidavit of managing director acting managing director manager or acting manager in applications for probate or administration.

6. In all cases in which probate or letters of administration shall be granted to the said company all the capital both paid and unpaid and all other assets of the company shall be liable for the proper administration of the estate committed to the company : and so soon as the said company shall possess a paid-up capital of not less than Twenty thousand pounds, of which paid-up capital Ten thousand pounds shall be invested in the purchase of debentures or inscribed stock in such of the public funds of the State as the directors of the said company may select in the name of the Treasurer of the State in trust for the said company, but transferable only upon the joint consent of the Treasurer of the State and the said company or upon the order of the Supreme Court or of a judge of the said court, the said liability of the capital and assets of the company shall be deemed in the case of letters of administration granted to the company to be sufficient security in place and stead of the bond taken in the case of private individuals to whom letters of administration may be granted.

Assets of company to be liable for proper administration of estates and no bond to administer to be required when paid-up capital is £20,000 of which £10,000 is invested in Government securities.

7. In all cases in which any court of justice or any person or persons having authority or power to appoint any person a trustee or receiver, or a committee or guardian of the estate under the *Lunacy Act* 1890 or as sole guarantor or surety for any person appointed as administrator or as receiver guardian or committee in lunacy, or the guardian of an infant or lunatic, shall see fit to appoint the said company as trustee or as receiver or as committee or guardian of the estate under the *Lunacy Act* 1890 or as such sole guarantor or surety or guardian of an infant or lunatic as aforesaid, it shall be lawful for the said company to be so appointed and to act until removed from such office as such trustee or receiver or committee or guardian or as such sole guarantor or surety or guardian of an infant or lunatic as aforesaid, and to perform and discharge all acts and duties pertaining to the position of trustee receiver committee or guardian or as such sole guarantor or surety or guardian of an infant or lunatic as aforesaid, and the capital

Company may be appointed trustee receiver committee or guardian of estate under *Lunacy Act* 1890, &c.

capital of the said company both paid and unpaid and all other assets of the company shall be liable for the proper discharge of the duties committed to the said company ; and so soon as the paid-up capital of the company shall amount to Twenty thousand pounds such liability of the capital and other assets of the company shall be deemed sufficient security for the discharge of such duties in place of the bond required from private persons when appointed as receiver committee guardian guarantor or surety.

Company may act under power of attorney by managing director acting manager or two directors.

8. It shall be lawful for the said company to act under any power of attorney by which such company is appointed attorney by any person or by any company or corporation, and all the powers conferred upon such company by any such power of attorney may be exercised and carried into execution by the managing director acting managing director manager or acting manager or by any two of the directors of the said company, but in all cases the capital both paid and unpaid and all other assets of the said company shall be liable for the due execution of the powers so conferred upon the said company ; but this section shall not authorize any person company or corporation to confer any power upon the said company which cannot be legally conferred upon a private individual.

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

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

Executors administrators trustees receivers committees and guardians may appoint company to discharge duties for them.

10. It shall be lawful for the executors or executor administrators or administrator acting under any probate or administration whether granted before or after the coming into operation of this Act, and for any trustees or trustee or any receiver or committee or guardian of the estate under the *Lunacy Act* 1890 or the guardian or guardians of any infant or lunatic with the consent of the Supreme Court to
appoint

appoint the said company to perform and discharge all the acts and duties of such executors or executor administrators or administrator trustees or trustee receiver committee guardians or guardian (as the case may be) and such company shall have power to perform and discharge all such acts and duties accordingly, and in every such case all the capital both paid and unpaid and all other assets of the said company shall be liable for the proper discharge of such duties, and the executors or executor administrators or administrator trustees or trustee receiver committee guardians or guardian so appointing the said company shall be released from liability in respect of all acts done by or omitted to be done by the said company acting under such appointment.

11. Every application for such consent shall be by motion, and notice of the intended application shall be advertised once in one daily newspaper published in Melbourne seven days before the making thereof, and in the case of an executor or administrator of a testator or intestate who died in Victoria a like notice shall also be advertised once in some local newspaper (if any) circulating in the district in which the testator or intestate resided, and the court may require any person resident in Victoria and entitled to the immediate receipt of any of the income or corpus of the estate in respect of which the application is made to be served with notice thereof, and the cost of such application shall be in the discretion of the court and may be ordered to be paid out of the estate and such consent shall not be given in any case of a will in which the testator has expressed his wish that the trusts thereof should not be delegated or that the said company should not act therein.

Application for
consent to be by
motion.

12. In all cases in which the personal attendance of an executor administrator trustee receiver committee or guardian of the estate under the *Lunacy Act* 1890 or as sole guarantor or surety as aforesaid or guardian of an infant or lunatic is required in a court of justice or elsewhere, the said company shall be entitled to make such attendance in the person of the managing director acting managing director manager or acting manager of the said company and the personal duties of executor administrator trustee receiver committee or guardian of such sole guarantor or surety as aforesaid may be discharged on behalf of the said company by the managing director acting managing director manager or acting manager. And in every case where the said company shall obtain probate or letters of administration to be granted to the said company, and also in every case where the said company shall be appointed and shall act as trustee receiver committee or guardian or as such sole guarantor or surety as aforesaid, the manager or acting manager and directors shall be individually and collectively in their own proper persons responsible to the court, and shall in their own proper persons be liable by process of attachment
commitment

Managing director
acting manager
director manager
or acting manager
may attend on
behalf of company
and directors and
manager and acting
manager shall be
personally
responsible
to the court.

commitment for contempt or by other process to all courts having jurisdiction in that behalf for the proper discharge of their duties and for obedience to the rules orders and decrees of such courts in the same manner and to the same extent as if such manager or acting manager and directors had personally obtained probate or letters of administration and had acted as executor administrator trustee receiver committee or guardian or as such sole guarantor or surety as aforesaid. But notwithstanding such personal responsibility of the said manager or acting manager and directors the capital both paid and unpaid and all the assets of the said company shall remain liable for any pecuniary loss which may be occasioned or which may happen through the imperfect or improper discharge or through the neglect of the said company or of any of its officers of any act or duty in respect of any office appointment or engagement held or entered upon by the said company.

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

13. The said company shall be entitled to receive, in addition to all moneys properly expended by it and chargeable against the estates placed under the administration and management of the said company, a commission to be fixed from time to time by the directors of the said company, but not to exceed in any case Two pounds ten shillings for every One hundred pounds of the capital value of any estate committed to the management of the said company as executor administrator trustee receiver committee or guardian of the estate under the *Lunacy Act* 1890 or as sole guarantor or surety or guardian of any infant or lunatic, and Five pounds for every One hundred pounds of income received by the said company as executor administrator trustee receiver committee or guardian of the estate under the *Lunacy Act* 1890 or as such sole guarantor or surety as aforesaid or guardian of any infant or lunatic or of capital or income received by the said company as an attorney acting under power of attorney, and such commission shall be payable out of the moneys or property committed to the management of the said company and shall be received and accepted by the said company as a full recompense and remuneration to the said company for acting as such executor administrator trustee receiver committee or guardian or as such sole guarantor or surety as aforesaid or attorney, and no other charges beyond the said commission and the moneys so expended by the said company shall be made by the said company. But if in any case the Supreme Court or a judge thereof shall be of opinion that such commission is excessive it shall be competent for such court or judge to review and reduce the rate of such commission. Provided that the commission to be charged by the said company shall not exceed in each estate the amount of the published scale of charges of the said company at the time when such estate was committed to the said company. Nor shall this enactment prevent the payment of any commission directed by a testator in his will in lieu of the commission hereinbefore mentioned.

14. In

14. In all cases in which the said company shall be appointed executor administrator trustee receiver committee or guardian of the estate under the *Lunacy Act* 1890 or guardian of any infant or lunatic or attorney under power the said company shall in addition to the liabilities and restrictions imposed by this Act be subject in all respects to the same control and liable to removal as private individuals who may be appointed executor administrator trustee receiver committee guardian or attorney are subject to. And it shall be lawful for all persons who may claim relief against the said company for any act done or assumed to be done or in respect of any act omitted to be done by the said company its directors or officers under any of the powers conferred by this Act to proceed in the Supreme Court or in any other court of competent jurisdiction either by action or other ordinary procedure of such court or in any summary way by motion against the said company or against any of the directors or officers of the said company and such court may make and enforce such order in such manner as to such court shall seem just.

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

15. If any trustee *cestui que* trust executor or legatee administrator or wife or husband or next of kin or creditor or infant entitled to or interested in any estate which shall have come (or shall hereafter come) into the possession or under the control of the said company shall be unable, upon application to the managing director acting managing director manager or acting manager of the said company, to obtain a sufficient account of the property and assets of which such estate shall consist and of the disposal and expenditure thereof or thereout such trustee *cestui que* trust executor or legatee administrator or wife or husband or next of kin or infant or creditor shall be entitled to apply to the Supreme Court or to any judge thereof upon motion after notice to the said company, but without action or petition for an account, and if the said Supreme Court or judge shall be of opinion that no sufficient account has been rendered by the said company the said court or judge shall order such account to be rendered by the said company as to the said court or judge shall seem just, or if the said court or judge shall think that no sufficient case has been established to require the said company to furnish an account it shall be lawful for the said court or judge to dismiss the application and the said court or judge shall have power in all cases to make such order as to costs either against the said company or against the applicant or as to payment of costs out of the estate as to the said court or judge shall seem right.

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

16. It shall be lawful for the Supreme Court or for any judge thereof on application under the last preceding section to order in addition to or in substitution for any account to be rendered by the said company that a person to be named in such order shall examine the

Supreme Court or judge may order audit in any estate committed to the company.

the books and accounts of the said company in reference to the estate as to which the order is made, and in that case the said company shall deliver to the person named in such order a list of all books kept by the said company, and shall produce to such person at all reasonable times when required the said books and all accounts vouchers papers and other documents of the said company, and shall afford to him all necessary information and all other necessary facilities for enabling him to make the said examination. And the said court or any judge thereof shall have the same power as to the costs of such examination as is given by the last preceding section in reference to costs of or occasioned by the application under that section.

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

17. So long as any estate in respect of which the said company is executor administrator trustee receiver committee or guardian shall remain in whole or in part unadministered it shall not be lawful to proceed to wind up the said company voluntarily unless with the sanction of the Supreme Court or of a judge of such court; and it shall be lawful for any person interested in such estate or who may have any claim in respect thereof to apply to the Supreme Court or to a judge of such court in a summary way to restrain any director or any shareholder from disposing of any share which such director or shareholder may hold in the said company or to restrain the winding up voluntarily of the said company, and the said court or judge shall in any and every such case have power to make such order in the matter as the circumstances of each case shall appear to such court or judge to require.

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

No member to hold more than 1,000 shares.

No member shall hold more than One thousand shares in his own right ;

Ten shillings per share to be available on winding up.

No more than Ten shillings per share shall be called up except in the event of and for the purpose of the winding up of the company, and every member shall be liable for this amount per share in such event in addition to the sum of Ten shillings per share liable to be called up by the directors ;

Directors' liability to continue on all shares held within two years of winding up.

In such event every person who has been a director of the company at any time within the period of two years preceding the commencement of the winding up shall be liable for the sum of Ten shillings per share on every share which he may have held and transferred during such two years in addition to his liability upon any shares held by him at the commencement of the winding up ;

The

The capital of the company shall be and remain divided into shares of One pound, and the number of shares in the company shall not be at any time reduced to less than Fifty thousand.

Capital to be in £1 shares and not to be reduced.

19. All moneys which form part of any estate of which at any time the said company shall be executor administrator trustee receiver committee or guardian and which moneys shall remain unclaimed by the person entitled to the same for a period of five years after the time when the same shall have become payable to such person, except where payment has been or shall be restrained by the injunction of some court of competent jurisdiction, shall be paid by the said company to the receiver of revenue in Melbourne, to be placed to the credit of a fund to be called the "Testamentary and Trust Fund" distinguishing the particular estates in respect of which such moneys shall have been paid, and such moneys shall bear interest at the rate of Three pounds per centum per annum until invested as herein directed. And it shall be lawful for the Treasurer of the State from time to time to invest such moneys in the purchase of Government debentures or stock, to be placed to the credit of the said "Testamentary and Trust Fund" distinguishing in the ledger the particular estate in respect of which such moneys have been invested. And the interest payable on such debentures or stock shall be placed to the credit of the said fund, and the Treasurer's said account in the ledger shall be an official and not a nominal account, and in all transfers of the said debentures and stock by the Treasurer he shall be so styled without any name addition or description, and he shall not sign any such transfers or pay over any of the moneys standing to the credit of the said fund unless an order of the Supreme Court or of a judge of such court directing such transfer and specifying the amount of moneys debentures or stock and the name description and addition of the person to whom it is to be transferred and paid or an order of such court or judge directing a sale of such debentures or stock and specifying the amount of money to be raised by such sale and the name description and addition of the person to whom the proceeds of such sale are to be paid shall be left at the office of the Treasurer, nor in this latter case until a receiver of revenue appointed in that behalf has certified that he has received the purchase money of the debentures or stock to be sold. And the said company shall at the end of every six months deliver to the Treasurer a statement of all such unclaimed moneys which during the preceding six months shall have been in its hands, and distinguishing the several estates in respect of which the same have been received, and setting out the dates and amounts of the several payments of the same under this section, and if the said moneys or any part thereof have not been paid to the aforesaid receiver of revenue stating the reason for the delay of such payments. If default is made in compliance with the foregoing

Moneys remaining unclaimed for five years to be paid to receiver of revenue.

Statement of unclaimed moneys to be furnished to the Treasurer.

Penalty.

foregoing provision of this section the company shall be liable to a penalty not exceeding Five pounds for every day while such default continues, and every director and manager or acting manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Persons entitled to
moneys in
"Testamentary
and Trust Fund"
may apply to the
Supreme Court
or judge within six
years.

20. Any person who shall be entitled to any stock debentures or moneys which shall at any time form part of the said "Testamentary and Trust Fund" shall be entitled to apply to the Supreme Court or to a judge of the said court upon a petition in a summary way without action for such order as is in the last preceding section referred to, and the said court or judge shall deal with such application as nearly as may be in the same manner as is done in the case of applications to the said court under section fifty-six of the *Trusts Act* 1890. No person however shall be entitled to make any such application after the expiration of six years from the time when such moneys were paid to the said receiver of revenue, but no time during which the person entitled to make such application shall have been an infant or *feme covert* or of unsound mind or beyond the seas shall be taken into account in estimating the said period of six years; and in all cases in which the Treasurer may see fit to appear upon such petition he shall be entitled to such costs against the applicant or out of the fund as the court or judge may direct.

Order for account
on application of
Treasurer.

21. If the Treasurer of the State shall be unable upon application to the managing director acting managing director manager or acting manager of the said company to obtain a sufficient account of the property and assets of which any or every estate included in or which ought to be or to have been included in the hereinbefore mentioned statement of unclaimed moneys shall consist, and of the disposal and expenditure thereof or thereout, such Treasurer shall be entitled to apply to the Supreme Court or to any judge thereof upon motion after notice to the said company but without action or petition for an account, and if the said Supreme Court or judge shall be of opinion that no sufficient account has been rendered by the said company the said court or judge shall order such account to be rendered by the said company as to the said court or judge shall seem just, or if the said court or judge shall think that no sufficient case has been established to require the said company to furnish an account it shall be lawful for the said court or judge to dismiss the application, and the said court or judge shall have power in all cases to make such order as to costs either against the said company or against the applicant or as to payment of costs out of the estate as to the said court or judge shall seem right.

22. The

22. The managing director acting managing director manager or acting manager of the said company shall during the months of January and July in every year during which the company carries on business make before some justice a declaration in the form contained in the Schedule hereto or as near thereto as circumstances will admit, and a copy of such declaration shall be put up in a conspicuous place in the registered office of the company and in every branch office or place where the business of the company is carried on, and shall be given to any member or creditor of the company who applies for the same. If default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding Five pounds for every day while such default continues, and every director and manager or acting manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Returns to be made
to be filed with
Registrar-General.

23. Nothing in this Act contained shall be deemed to give to the said company any *locus standi* to oppose the granting of similar powers to those conferred upon the said company by this Act to any other company or to corporations generally, or to claim or to seek compensation in consequence of such powers being conferred upon any other company or upon corporations generally.

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

24. Where by any will codicil or other testamentary writing a testator shall direct that any practising solicitor shall conduct the legal business of his estate such solicitor shall be entitled to act therein accordingly, but in such case the said company shall not be liable for the negligence mis-feasance non-feasance or misconduct of such solicitor, and such solicitor may be removed by order of the Supreme Court or of a judge thereof upon the application of the said company or of any person interested in the estate upon cause shown, and then and in such case the court or judge may appoint the solicitor of the company.

Testators may
appoint their own
solicitors.

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

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

26. This Act shall be called and may be cited as the "*Bendigo and Country Districts Trustees and Executors Company Limited Act.*"

Short title of Act.

SCHEDULE.

SCHEDULE.

(Referred to in Section 22.)

THE BENDIGO AND COUNTRY DISTRICTS TRUSTEES AND EXECUTORS COMPANY LIMITED.

I (managing director, manager, or
as the case may be) do solemnly and sincerely declare :—

That the liability of the members is limited.

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

That the number of shares issued is _____

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

That the liabilities of the company on the last day of June (or December) last
were :—

Debts owing to sundry persons by the company, viz.:—

On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

That the assets of the company on that day were :—

Government securities, £
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

And I make this solemn declaration conscientiously believing the same to be true,
and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons
making a false declaration punishable for wilful and corrupt perjury.

MELBOURNE:

By Authority : J. KEMP, Government Printer.