



ANALYSIS

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1962, No. 5—*Private*

An Act to confer powers upon East Coast Permanent Trustees Limited
[7 December 1962]

WHEREAS East Coast Permanent Trustees Limited was duly incorporated under the name of East Coast Perpetual Trustees Limited on the seventeenth day of June, nineteen hundred and twenty-nine, as a private company under the Companies Act 1908, having a share capital of five thousand pounds: And whereas on the seventh day of November, nineteen hundred

and twenty-nine, the name of the company was changed to East Coast Permanent Trustees Limited: And whereas the present capital of the company is twenty-five thousand pounds, divided into twenty-five thousand shares of one pound each, all fully paid up: And whereas the company is authorised by its memorandum of association to act as trustee and in divers other fiduciary capacities and, in particular, to act as executor of the will of any deceased person and as administrator with the will annexed of the estate of any deceased person: And whereas the company since the date of its incorporation, in exercise of the powers conferred by its memorandum of association, has carried on, and is now carrying on, a trust and agency business: And whereas letters of administration with the will annexed of the estates of divers deceased persons have from time to time been granted to syndics appointed by the company for the use and benefit of the company in cases where the company has been named as executor of the will: And whereas it is enacted by section 42A of the Administration Act 1952 (as inserted by section 4 of the Administration Amendment Act 1960) (in this preamble called "the said section") that, save as therein provided, after the commencement of the said section, no grant of probate of the will of any deceased person or letters of administration of the estate of a deceased person, either with or without the will annexed, shall be made to any company unless that company is expressly authorised by an Act of Parliament to apply for and obtain such grant: And whereas it is further enacted by the said section that, for the purposes of the said section, a grant of probate or letters of administration to a syndic of a company shall be deemed to be a grant to that company: And whereas the said section comes into force on the first day of January, nineteen hundred and sixty-three: And whereas, by virtue of the appointment of the company as trustee under divers deeds and other instruments and by virtue of the grant of letters of administration with the will annexed of the estates of divers deceased persons to syndics appointed by the company, the company is at present administering assets of a value of more than two million pounds: And whereas the company has knowledge of a number of wills of persons now living in which wills the company has been named as executor and trustee: And whereas the company is desirous that it should have conferred upon it the powers hereinafter set forth in order to enable it to act as executor of the will of any deceased person and as administrator, either with or without the will annexed, of the estate of any deceased person, and further to

enable it more effectually to carry on the trust and agency business which it is authorised to carry on under its memorandum of association: And whereas it is expedient to define the powers of the company and to regulate its procedure and practice in relation to obtaining probate of wills and letters of administration of the estates of deceased persons and in acting in any other fiduciary capacity in manner hereinafter set forth:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the East Coast Permanent Trustees Limited Act 1962.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Approved surety” means either an incorporated company or guarantee society approved by the Governor-General in Council for the purposes of subsection (4) of section 6 of the Administration Act 1952 or the State Fire Insurance General Manager:

“The company” means East Coast Permanent Trustees Limited:

“Will” includes a codicil.

3. Company may act as executor and obtain probate—Whenever the company is named as executor in the last will of any testator, it shall be lawful for the company to be and act as executor; and the company shall be entitled to apply for and obtain probate of the will 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.

4. Company may apply for administration with or without will annexed—The power of the company to apply for and obtain probate of the will of any deceased person shall extend to and include the power to apply for and obtain letters of administration of the estate of a deceased person, either with or without the will annexed, and to perform and discharge all other the acts and duties of an administrator as fully and effectually as a private individual may do when granted letters of administration.

5. Court may act upon affidavit of director or secretary— In all cases in which the company is empowered to apply for probate, or for letters of administration of the estate and effects of any deceased person, it shall be lawful for the Court in which, or the officer before whom, the application is made to receive and act upon an affidavit made by a director or by the secretary of the company in place of any affidavit required by the said Court to be made by persons making application for probate or letters of administration.

6. Company to execute and maintain bond—(1) The company shall forthwith after the commencement of this Act execute a bond to the Public Trustee in the form set out in the First Schedule to this Act or to the like effect, with an approved surety as surety, in the sum of twenty-five thousand pounds, conditioned to secure the due, punctual, and proper discharge and performance by the company of all duties imposed upon the company by this Act and of all acts, duties, and obligations of a fiduciary character of a description referred to in this Act and (subject to the provisions of this section) shall at all times maintain that bond, or another bond in terms of this section, in full force and effect.

(2) The company shall furnish to the Public Trustee within three months after the end of each financial year of the company a duly audited copy of its profit and loss account for that year and a duly audited copy of its balance sheet as at the end of that year.

(3) For the purposes of this section:

(a) It shall be lawful for the surety under any bond executed under this section for the time being in force at any time, by giving not less than nine months' notice in writing by registered post to the company and the Public Trustee, to determine his or its liability under the bond in respect of any act or default that may be done or made after the date of expiry of the notice:

(b) The company may from time to time execute another bond to the Public Trustee in a form approved by him, with another approved surety as surety, in the same sum and conditioned as aforesaid. If the surety under any bond executed under this section for the time being in force gives notice as provided in paragraph (a) of this subsection, or ceases to carry on business, or ceases to be an approved surety, the company shall execute and deliver to the Public

- Trustee another such bond within nine months after that surety gives notice as aforesaid or sooner ceases to carry on business or to be an approved surety:
- (c) The company shall be at liberty at any time, and from time to time, after the commencement of this Act to deposit with the Public Trustee New Zealand Government securities or other investments of a description for the time being authorised by law for the investment of trust funds and, while the company is required to maintain a bond in terms of this section, such investments shall be held by the Public Trustee as security for, and shall stand charged with, the due, proper, and punctual performance and discharge by the company of all duties imposed upon the company by this Act and of all acts, duties, and obligations of a fiduciary character of a description referred to in this Act. Such investments may (with the written consent of the Public Trustee) be varied or transposed from time to time. From and after any deposit of investments by the company under this paragraph the amount of the bond (if any) which the company is required for the time being to maintain in terms of this section shall, on application by the company to the Public Trustee, be reduced to a sum equal to the difference between fifty thousand pounds and the aggregate of the value of those investments for the time being and the amount of the paid up capital intact of the company as shown in the last balance sheet of the company furnished under subsection (2) of this section:
- (d) While the paid up capital intact of the company as shown in the last balance sheet of the company furnished under subsection (2) of this section is more than twenty-five thousand pounds then, if in any such balance sheet the paid up capital intact of the company is shown as having been increased since the end of the last preceding financial year of the company, the amount of the bond (if any) which the company is required for the time being to maintain in terms of this section shall, on application by the company to the Public Trustee, be reduced to a sum equal to the difference between fifty thousand pounds and the amount of the paid up capital intact of the company as shown in that balance sheet, or, if the company has deposited any investments under

paragraph (c) of this subsection, to a sum equal to the difference between fifty thousand pounds and the aggregate of the amount of the paid up capital intact of the company as shown in that balance sheet and the value of those investments for the time being:

- (e) The amount of the bond (if any) which the company is required for the time being to maintain in terms of this section shall be reviewed by the Public Trustee in each year after receipt by him of the balance sheet and profit and loss account of the company furnished under subsection (2) of this section, and, subject to the provisions of paragraph (f) of this subsection, if in any such balance sheet the paid up capital intact of the company is shown as having been reduced since the end of the last preceding financial year of the company, the company shall be required by the Public Trustee to execute and deliver to him a bond in terms of this section (which bond shall replace any bond for the time being in force) in a sum equal to the difference between fifty thousand pounds and the amount of the paid up capital intact of the company as shown in such balance sheet, or, if the company has deposited any investments under paragraph (c) of this subsection, in a sum equal to the difference between fifty thousand pounds and the aggregate of the amount of the paid up capital intact of the company as shown in such balance sheet and the value of those investments for the time being; and the company shall within such period, being not less than three months nor more than nine months, as the Public Trustee shall require execute and deliver to the Public Trustee a bond in terms of this section as provided by this paragraph:
- (f) While the paid up capital intact of the company as shown in the last balance sheet of the company furnished under subsection (2) of this section is not less than fifty thousand pounds, or, if the company has deposited any investments under paragraph (c) of this subsection, while the aggregate of the amount of the paid up capital intact of the company as shown in that balance sheet and the value of those investments for the time being is not less than fifty thousand pounds, it shall not be necessary for the company to maintain a bond in terms of this section:

- (g) If at any time the paid up capital intact of the company as shown in the last balance sheet of the company furnished under subsection (2) of this section is not less than fifty thousand pounds the company shall be entitled to have returned to it on demand any investments deposited under paragraph (c) of this subsection:
- (h) For the purposes of this subsection the expression "paid up capital intact", in relation to the company, means the paid up capital represented by fixed and floating assets of the company as shown in the balance sheet, excluding intangible or fictitious assets, and excluding the amount of any investments deposited with the Public Trustee under paragraph (c) of this subsection, and clear of all claims or demands for the time being due or pending or enforceable against the company as shown in the balance sheet and in respect of which the company is not fully indemnified.

(4) So long as the company continues to act in any such fiduciary capacity as mentioned in subsection (1) of this section the company shall duly and punctually pay all premiums and sums of money from time to time payable to the surety under any bond executed under this section for the time being in force and shall, at the request of the Public Trustee, produce to him the receipts for all such premiums and sums of money.

(5) 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 the default continues, and every director and the secretary of the company who knowingly and wilfully authorises or permits the default shall incur the like penalty; and so long as the default continues the company shall not, except in respect of estates of deceased persons already under administration by the company, whether as executor, administrator (with or without will annexed), or trustee, or in respect of fiduciary positions already held by the company pursuant to this Act, be deemed to be—

- (a) For the purposes of the Administration Act 1952 a trust company, or a company expressly authorised by this Act to apply for and obtain probate of the will of a deceased person or letters of administration of the estate of a deceased person, with or without the will annexed:

- (b) For the purposes of the Trustee Act 1956 a trustee corporation, or a corporation expressly authorised by this Act to administer the estates of deceased persons:
- (c) A company authorised by this Act to hold any of the fiduciary positions referred to in section 8 of this Act:

and the provisions of section 23 of this Act shall be subject to the provisions of this subsection; but nothing in this subsection shall be deemed to prohibit the company from acting in any fiduciary capacity in which the company would have been entitled to act if this Act had not been passed.

7. Costs incurred by Public Trustee and his remuneration—(1) Any costs incurred by the Public Trustee in connection with the giving or enforcement of any bond under section 6 of this Act, or the review or variation of the amount thereof, or in connection with any securities deposited with the Public Trustee pursuant to that section, and reasonable remuneration for his services in connection with any of these matters shall be payable to him by the company.

(2) The amount of the remuneration from time to time payable to the Public Trustee under this section shall be as may be agreed upon between the Public Trustee and the company or (failing agreement) as shall be fixed by the Minister of Finance, either generally or on any particular occasion.

8. Assets of company liable—The capital, both paid and unpaid, and all other assets of the company shall be liable for the proper administration of all estates entrusted to the charge of the company.

9. Company may be appointed trustee and hold other fiduciary positions—In all cases in which any Court of justice or any person or corporation appoints the company to be a trustee under any deed, will, settlement, or other document, or a guardian or a trustee or a receiver, or to be a manager, or committee of the estate under any law now in force or hereafter to be in force in New Zealand relating to mentally defective persons, it shall be lawful for the company to accept the appointment and to act as such trustee, guardian, receiver, manager, or committee and to perform and discharge all acts and duties pertaining to any such office; and in all such cases the capital of the company, both paid and unpaid, and all other assets of the company shall be liable for the proper discharge of the duties committed to the company.

10. Company may act under power of attorney by directors—It shall be lawful for the company to act under any power of attorney by which the company is appointed attorney by any person or by any company or corporation, and all powers conferred upon the company by any such power of attorney may be exercised and carried into execution by the secretary and any director or by any two directors of the company; but in all cases the capital both paid and unpaid, and all other assets of the company shall be liable for the due execution of the powers so conferred upon the company.

11. Provisions of Property Law Act 1952 and of Companies Act 1955 to apply—The provisions of sections 134 and 135 of the Property Law Act 1952, and of section 399 of the Companies Act 1955, shall extend and apply, as the case may require, to every power of attorney by which the company is appointed by any person, company, or corporation; and a statutory declaration made at the time prescribed by section 135 of the Property Law Act 1952 by the secretary and any director, or by any two directors, of the company that the company has not, to the best of the knowledge and belief of the persons making the declaration (as regards any power of attorney given to the company by an individual), received any notice or information of the revocation by death or otherwise of any such power of attorney, or (as regards any power of attorney given to the company by another company or corporation) of the revocation of the power of attorney, or of the winding up or dissolution of the principal company or corporation, shall have the same force and effect as the declaration mentioned in the said section when made by a private individual acting under power of attorney.

12. Director or secretary may represent company when personal attendance necessary—In all cases in which the personal attendance of an executor, administrator, trustee, receiver, committee, manager, or guardian is required in a Court of justice or elsewhere, the company shall be entitled to make that attendance in the person of a director or of the secretary of the company; and the personal duties of executor, administrator, trustee, receiver, committee, manager, or guardian may be discharged on behalf of the company by a director or by the secretary of the company; and the director or secretary shall be responsible in his own proper person by process of attachment, commitment for contempt, or by other process to all Courts having jurisdiction over the matter for the proper discharge of the duties and for obedience to the

orders and decrees of the Court, as well by the company as by the said director or secretary and by all officers of the company; but, notwithstanding the personal liability of the said director or secretary, the capital both paid and unpaid, and all other assets of the company, shall remain liable for any pecuniary loss which may be occasioned or may happen through the imperfect or improper discharge or through the neglect of the company or of any of its officers of an act or duty in respect of any office, appointment, or engagement held or entered upon by the company.

13. Company's remuneration for services—The company shall be entitled to receive, in addition to all moneys properly expended by it and chargeable against the estate placed under the administration and management of the company, a commission to be fixed from time to time by the board of directors of the company, but not to exceed in any case five pounds for every one hundred pounds received by the company as executor, administrator, trustee, receiver, committee, manager, or guardian, or as an attorney acting under power of attorney; and that commission shall in each case be payable out of the moneys or property committed to the management of the company, and shall be received and accepted by the company as a full recompense and remuneration of the company for acting as such executor, administrator, trustee, receiver, committee, manager, guardian, or attorney:

Provided that nothing in this Act shall prevent the company from charging and accepting payment of any commission or remuneration expressly directed by any will, deed, settlement, order, decree, or other document appointing the company executor, administrator, trustee, receiver, committee, manager, guardian, or attorney.

14. Company's liability to be the same as private individual—In all cases in which the company is appointed executor, administrator, trustee, receiver, committee, guardian, or attorney under power, the company shall, in addition to the liabilities and restrictions imposed by this Act, be subject in all respects to the same control and liability to removal as a private individual who may be appointed executor, administrator, trustee, receiver, committee, guardian, or attorney.

15. Order of accounts may be made by Court—If any trustee, *cestui que trust*, executor or legatee, administrator or next of kin, or creditor, entitled to or interested in any estate

which has come or hereafter comes into the possession or under the control of the company is unable, upon application to the board of directors or to the secretary of the company, to obtain a sufficient account of the property and assets of which the estate shall consist and of the disposal and expenditure thereof or thereout, the trustee, *cestui que trust*, executor or legatee, administrator or next of kin, or creditor shall be entitled to apply to the Supreme Court, after notice to the company, but without suit or petition for an account, and if the Supreme Court is of opinion that no sufficient account has been rendered by the company, the said Court shall order such account to be rendered by the company as to the said Court seems just; or if the said Court thinks that no sufficient case has been established to require the company to furnish an account, it shall be lawful for the said Court to dismiss the application; and the said Court shall have power in all cases to make such order as to costs either against the company or against the applicant, or as to payment of costs out of the estate, as to the said Court seems right.

16. Court may order audit—It shall be lawful for the Supreme Court on application under section 15 of this Act, to order, in addition to or in substitution for any account to be rendered by the company, that a person to be named in the order shall examine the books and accounts of the company in reference to the estate as to which the order is made; and in that case the company shall deliver to the person named in the order a list of all books kept by the company, and shall produce to that person at all reasonable times when required the said books and all accounts, vouchers, papers, and other documents of the 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 shall have the same power as to the costs of such examination as is given by section 15 of this Act in reference to costs of or occasioned by the application under that section.

17. Statement of assets and liabilities of company to be gazetted yearly—(1) The secretary of the company shall once in every year during which the company carries on business, make before a solicitor or Justice of the Peace a declaration in form contained in the Second Schedule hereto, or as near thereto as circumstances will admit; and a copy of the declaration shall be published in the *Gazette*, and shall be

put up in a conspicuous place in the registered office of the company and in every branch office or place in New Zealand 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.

(2) 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 the default continues, and every director and the secretary of the company who knowingly and wilfully authorises or permits the default shall incur the like penalty.

18. Members to be domiciled in New Zealand—(1) All the members of the company shall be persons domiciled in New Zealand.

(2) For the purposes of this section a person shall be deemed to be domiciled outside New Zealand if—

- (a) That person holds any share in the company as trustee or nominee for another person and that other person is domiciled outside New Zealand; or
- (b) Another person who is domiciled outside New Zealand has any right, title, or interest in, or control over, any share in the company held by the first-mentioned person; or
- (c) The first-mentioned person, being a company, is deemed, for the purposes of the Companies Act 1955, to be a subsidiary of another company and that other company is incorporated outside New Zealand.

19. Company not to wind up without sanction of Court—So long as any estate in respect of which the company is executor, administrator, or trustee remains in whole or in part unadministered it shall not be lawful to proceed to wind up the company voluntarily, unless with the sanction of the Supreme Court; and it shall be lawful for any person interested in any such estate or who may have any claim in respect thereof to apply to the Supreme Court in a summary way to restrain any member of the company from transferring any share which that member may hold in the company, or to restrain the winding up voluntarily of the company, and the said Court shall in any and every such case have power to make such order in the matter as the circumstances of each case appear to that Court to require.

20. Members to be liable for additional contribution on winding up, etc.—(1) In the event of the company being wound up, every then present and past member of the company shall be liable to contribute to the assets of the company to the extent of four pounds upon each share of which the member then is or has been within one year, or (in the case of a director of the company) within two years, next before the commencement of the winding up, the holder, over and above the amount (if any) unpaid on the shares in respect of which he may be liable as a present or a past member.

(2) The company shall not pass any resolution to consolidate and divide all or any of its share capital into shares of larger amount than its existing shares for the time being if the effect of that resolution would be to reduce the total amount which, in the event of the company being wound up at any time after the passing of that resolution, the present and past members of the company would, prior to the passing of such resolution, be liable to contribute to the assets of the company under subsection (1) of this section.

21. Deceased estates to have certain priority on winding up—In the event of the company being wound up, then, to the extent of the moneys contributed to the assets of the company by then present and past members under section 20 of this Act, but not otherwise, the claims of beneficiaries in the estates of deceased persons then under administration by the company, whether as executor, administrator, or trustee, shall have priority over all other claims and shall rank equally *inter se*.

22. Moneys unclaimed for six years to be paid to Consolidated Fund—(1) Every sum of money held by the company as a trustee, executor, guardian, or otherwise under this Act which remains unclaimed, and of which no lawful owner is known, for a period of six years after its receipt by the company shall at the end of each financial year be paid over by the company to the Consolidated Fund, and every such payment shall, to the extent of the moneys paid, discharge the company of the trust in respect of those moneys.

(2) Nothing in this section shall operate as a bar to any lawful claim to any such moneys for a period of ten years after their receipt by the company, and the Minister of Finance shall, within that period, issue and pay any such lawful claims out of the Consolidated Fund without further appropriation than this Act.

(3) 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 the default continues, and every director and the secretary of the company who knowingly and wilfully authorises or permits the default shall incur the like penalty.

23. Company deemed to be trust company, etc.—The company shall be deemed to be—

- (a) A trust company for the purposes of the Administration Act 1952;
- (b) A trustee corporation for the purposes of the Trustee Act 1956;
- (c) A trustee company for the purposes of the Trustee Companies Act 1960 and of the Trustee Companies Protection Act 1934–35.

24. Powers of company not to be affected by the Act—Nothing in this Act contained shall be construed to affect the constitution or powers of the company set forth in its memorandum of association, but the company shall continue under its original incorporation with the powers and privileges by this Act conferred, and subject to the additional duties and liabilities by this Act imposed.

25. Company to be subject to future legislation—The company shall be subject to the provisions of any Act that may hereafter be passed by the General Assembly that applies to or is for the regulation of trust companies, trustee companies, or trustee corporations, and shall not be entitled to receive any compensation in respect of the operation of any Act which may be so passed whatsoever may be the effect of any such Act in respect of the company.

26. Jurisdiction and powers of Court not to be affected—Nothing in this Act contained shall operate to annul or abridge any powers or jurisdiction now possessed by the Supreme Court in respect of trustees, and all such powers and jurisdiction shall apply to the company in respect of all trusts undertaken by it.

27. Private Act—This Act is hereby declared to be a private Act.

SCHEDULES

FIRST SCHEDULE

Section 6

FORM OF BOND

KNOW all men by these presents that East Coast Permanent Trustees Limited a duly incorporated company having its registered office at Napier (hereinafter called "the company") and a duly incorporated company having its registered office at (hereinafter called "the surety") are held and firmly bound unto the Public Trustee of New Zealand in the sum of twenty-five thousand pounds (£25,000) for the payment of which sum to the Public Trustee the company and the surety do jointly and severally bind the company and the surety and their respective successors firmly by these presents.

Whereas by section 6 of the East Coast Permanent Trustees Limited Act 1962 (hereinafter called "the said Act") it is provided that the company shall execute in manner therein set forth a bond to the Public Trustee conditioned to secure the due, punctual and proper discharge and performance by the company of all duties imposed upon the company by the said Act and of all acts, duties, and obligations of a fiduciary character of a description referred to in the said Act:

Now the condition of the above-written bond is that if the company duly, punctually, and properly discharges and performs all duties imposed upon the company by the said Act and all acts, duties, and obligations of a fiduciary character of a description referred to in the said Act then the above-written obligation shall be void but otherwise shall remain in full force and effect:

Provided always that it shall be lawful for the surety at any time by giving not less than nine (9) calendar months' notice in writing by registered post to the company and the Public Trustee to determine its liability hereunder in respect of any act or default that may be done or made after the date of expiry of such notice.

Dated this day of 1962.

THE COMMON SEAL OF EAST COAST }
PERMANENT TRUSTEES LIMITED was } [L.S.]
hereunto affixed by the authority of the }
Board of Directors thereof in the }
presence of:

Director

Director

(Attestation clause in respect of execution by the surety to be added here)

Section 17

SECOND SCHEDULE

In the matter of the East Coast Permanent Trustees Limited Act 1962.

I, _____, Secretary of East Coast Permanent Trustees Limited, do solemnly and sincerely declare:

- 1. That the liability of the members is limited.
- 2. That the nominal share capital of the company is £ _____ divided into _____ shares of £ _____ each.
- 3. That the number of shares issued is _____.
- 4. That the whole of the subscribed share capital has been paid up.
- 5. That the assets of the company at the end of its last financial year, namely, on the _____ day of _____, 19____, were as follows: _____.
- 6. That the liabilities of the company on the said _____ day of _____, 19____, were as follows:
 - (a) Secured liabilities, £ _____
 - (b) Unsecured liabilities, £ _____
 - (c) Estimated liabilities, £ _____
- 7. That the gross value of the assets of the estates of deceased persons brought under the administration of the company during the year ended on the said _____ day of _____, 19____, was £ _____.
- 8. That the gross value of the assets of the estates of deceased persons distributed by the company during the year ended on the said _____ day of _____, 19____, was £ _____.
- 9. That the gross value of the assets of the estates of deceased persons held by the company on the said _____ day of _____, 19____, was £ _____.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Oaths and Declarations Act 1957.

Declared at _____ this }
_____ day of _____ }
19____, before me: }

Solicitor or Justice of the Peace.

