

TRUSTEE ACT.

Act No. 14, 1925.

An Act to amend and consolidate the law relating to trustees and trust property; to amend in certain respects the law relating to executors and administrators; to amend the Wills, Probate and Administration Act, 1898, and certain other Acts; and for purposes connected therewith. [Assented to, 8th December, 1925.]

George V,
No. 14.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Trustee Act, 1925."

Short title
and com-
mencement.

(2) This Act shall commence and come into operation on the first day of March, one thousand nine hundred and twenty-six.

2. This Act is divided into Parts as follows:—

Division into
Parts.

PART I.—INTERPRETATION.

PART II.—TRUSTEES.

DIVISION 1.—*Appointment, retirement, disclaimer, and ceasing to be executor.*

DIVISION 2.—*Powers and duties.*

DIVISION 3.—*Delegation.*

DIVISION 4.—*Statute of limitations.*

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PART

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PART III.—POWERS OF THE COURT.

DIVISION 1.—*New trustees and vesting orders.*

DIVISION 2.—*Dealings and improvements.*

DIVISION 3.—*Relief and indemnity.*

DIVISION 4.—*Miscellaneous powers.*

DIVISION 5.—*Applications and orders.*

PART IV.—PAYMENT INTO COURT.

PART V.—MISCELLANEOUS PROVISIONS.

Repeal,
Schedule.

3. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All rules of court made under the authority of any Act hereby repealed and being in force at the commencement of this Act shall so far as applicable be deemed to have been made under the authority of this Act.

Savings.

45 & 46 Vic.,
c. 39, s. 13.
Conveyancing
Act, 1919,
s. 4.

4. (1) Any alteration of the law by this Act, whether by the repeal of an enactment or otherwise, shall not, unless otherwise expressly provided by this Act, affect—

(a) any right accrued, or obligation incurred, before the commencement of this Act under the law so altered;

(b) the validity or invalidity, or any operation, effect or consequence, of any instrument executed or made, or of anything done or suffered before the commencement of this Act;

(c) any action proceeding or thing pending or uncompleted at the commencement of this Act.

(2) Every such action proceeding and thing may be carried on and completed as if the enactment had not been repealed, or the law otherwise altered.

(3) The generality of this section shall not be affected by any saving in any other section of this Act, nor shall this section limit any saving in the Interpretation Act, 1897.

[*Re*
Boucherett
[1908] 1 Ch.
180.]

PART

PART I.

INTERPRETATION.

5. In the interpretation of this Act, unless the context or subject-matter otherwise indicates or requires—

“Administrator” means administrator within the meaning of the Wills, Probate and Administration Act, 1898, and includes the public trustee acting as collector of an estate under an order to collect.

“Contingent right,” as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent.

“Convey” and “conveyance,” applied to any person, include the execution or doing by that person of every necessary or suitable assurance act and thing for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of property.

“Court” means the Supreme Court in its equitable jurisdiction.

“Decree” includes order.

“Executor” means the executor to whom probate has been granted and includes an executor by right of representation.

“Government securities” include Government stocks, funds, bonds, debentures and Treasury bills.

“Incapable person” means a person not an infant who is incapable through mental infirmity, arising from disease or age, of managing his affairs, but who is not an insane person.

“Insane

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“Insane person” means a person who has been found or declared, whether by inquisition or under any Lunacy Act in force at the time, to be insane or of unsound mind and incapable of managing himself or his affairs.

“Instrument” includes deed will and Act of Parliament.

“Joint tenant” includes joint owner.

“Judge” means the Chief Judge in Equity, or any other judge of the Supreme Court exercising jurisdiction power or authority in equity.

“Land” includes tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein, whether vested or contingent, freehold or leasehold, and whether at law or in equity, in severalty or otherwise.

“Legal representative” means executor or administrator.

“Mortgage” includes and relates to every estate and interest regarded in equity as merely a security for money.

“Mortgagee” includes any person from time to time deriving title to the mortgage under the original mortgagee.

“Mortgagor” includes any person from time to time deriving title to the equity of redemption under the original mortgagor, or entitled to redeem a mortgage, according to his estate interest or right in the mortgaged property.

“Order” includes decree.

“Pay into court” and “payment into court” in relation to stocks and securities, include the deposit or transfer of the same in or into court.

“Possessed” extends to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any property.

“Property”

- “Property” includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any claim or demand, and any other right or interest, whether in possession or not. George V.
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- “Purchaser” includes a lessee or mortgagee, or other person who for valuable consideration takes or deals for any property; and “purchase” has a meaning corresponding with that of purchaser; but “sale” means only a sale properly so-called. 1919, No. 6,
s. 7.
- “Right” includes estate and interest.
- “Security” includes stocks, funds, and shares.
- “Stock” includes paid-up shares; and, so far as relates to vesting orders made by the Court under this Act, includes any fund annuity or security transferable in books kept by any corporation company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein.
- “Transfer” in relation to stock includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee.
- “Trust” does not include the duties incident to an estate conveyed by way of mortgage; but, with this exception, includes implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of legal representative of a deceased person.
- “Trustee” has a meaning corresponding with that of trust; and includes legal representative and the public trustee and a trustee company.
- “Trustee company” means an incorporated company authorised by Act of Parliament of this State to act as trustee in New South Wales.
- “Trustee

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“Trustee for sale” means a trustee in whom a trust for sale or a power of sale of property is vested.

“Will” includes codicil.

PART II.

TRUSTEES.

DIVISION 1.—*Appointment, retirement, disclaimer, and ceasing to be executor.*

Appointment.

New trustee.
56 & 57 Vic.,
c. 53, s. 10.
1898, No. 4,
s. 6.

6. (1) A new trustee may by registered deed be appointed in place of a trustee, either original or substituted, and whether appointed by the Court or otherwise.

Vict. Act,
2,741, s. 14.

(2) A new trustee may be so appointed in any of the following cases, namely—

12 & 13
Geo. V, c. 16,
s. 110 (11).

Ibid., s. 110
(2).

Ibid., s. 110
(3).

- (a) where a trustee is dead;
- (b) where a trustee remains out of New South Wales for more than one year without having properly delegated the execution of the trust;
- (c) where a trustee remains out of New South Wales for more than two years;
- (d) where a trustee desires to be discharged from all or any of the trusts or powers reposed in or conferred on him;
- (e) where a trustee refuses or is unfit to act in such trusts or powers, or is incapable of acting therein, or is an infant;
- (f) where a trustee is removed under a power contained in the instrument creating the trust;
- (g) where a trustee being a corporation is dissolved.

(3)

(3) The person to be appointed a trustee shall not be the person, or one of the persons, by whom or with whose consent the appointment is or may be made, unless the appointment is made with the consent of the Court or of a majority of the beneficiaries. George V,
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(4) The appointment may be made by the following persons, namely—

- (a) by the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) if there is no such person, or no such person able and willing to act, then by the surviving or continuing trustees or trustee for the time being, or by the legal representative of the last surviving or continuing trustee.

(5) The appointment may be made for the whole or any part of the trust property, and on the appointment— 56 & 57 Vic.,
c. 53, s. 10.

- (a) two or more trustees may be appointed concurrently;
- (b) the number of trustees may be increased, but not beyond four; 12 & 13
Geo. V, c. 16,
s. 109.
- (c) a separate set of trustees may be appointed for any distinct part of the trust property, that is to say, for any part for the time being held on trusts distinct from those relating to any other part or parts, notwithstanding that no new trustees or trustee are or is to be appointed for other parts, provided that the number of trustees in any separate set shall not exceed four;
- (d) any existing trustee may be appointed or remain one of the separate set of trustees;
- (e) if only one trustee was originally appointed, then one separate trustee may be appointed for the distinct part;
- (f) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed.

(6)

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(6) By the appointment a trustee in place of whom the new trustee is appointed shall be discharged from the trust, provided that, except where only one trustee was originally appointed, a trustee shall not be so discharged unless there will be left after the discharge at least two trustees, or the public trustee, or a trustee company, to perform the trust.

(7) Any conveyance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(8) Every new trustee appointed under this section, as well before as after all the trust property becomes by law or by conveyance or otherwise vested in him, shall have the same powers authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(9) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator.

Exclusion of
Re Sichel
([1916] 1 Ch.
358).

(10) The provisions of this section relative to a person nominated for the purpose of appointing new trustees apply, whether the appointment is to be made in a case specified in this section or in a case specified in the instrument, if any, creating the trust, but where a new trustee is appointed under this section in a case specified in that instrument, the appointment shall be subject to the terms applicable to an appointment in that case under the provisions of that instrument.

(11) The provisions of this section relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section, provided that—

- (a) where there is in fact a continuing trustee, nothing in this section shall authorise a refusing or retiring trustee to act apart from the continuing trustee;
- (b) if a refusing or retiring trustee does not act in the execution of the provisions of this section,
the

the fact that he was willing to act shall not affect the validity of an appointment made by any other person. George V,
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(12) Nothing in this section shall give power to appoint any person as an executor or administrator.

(13) Except as otherwise provided in subsection twelve, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(14) This section applies to trusts created either before or after the commencement of this Act, and extends to the appointment of a new trustee where the case for the appointment arose before the commencement of this Act.

(15) An appointment of a new trustee made before the commencement of this Act, under a power conferred by statute or by the instrument, if any, creating the trust, shall not be deemed to be invalid for the reason only that on the appointment the number of the trustees was increased or decreased, unless the increase or decrease was expressly forbidden by statute or by that instrument, but nothing in this subsection shall be deemed to invalidate any appointment of a new trustee made before the commencement of this Act.

7. (1) A new trustee may by registered deed be appointed in addition to any existing trustee or trustees. Additional
trustee.

(2) A new trustee may be so appointed in any of the following cases, namely— 12 & 13
Geo. V, c. 16,
s. 110 (1) (6).

- (a) where a sole trustee other than the public trustee or a trustee company is or has been originally appointed to act in a trust; or
- (b) where, in the case of any trust, there are not more than three trustees, either original or substituted, and whether appointed by the Court or otherwise, and none of the trustees is the public trustee or a trustee company.

(3) The person to be appointed a trustee shall not be the person, or one of the persons, by whom the appointment is or may be made, unless the appointment is made with the consent of the Court or of a majority of the beneficiaries.

(4)

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(4) The appointment may be made by the following persons, namely—

- (a) by the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) if there is no such person, or no such person able and willing to act, then by the trustee or trustees for the time being.

(5) The appointment may be made for the whole or any part of the trust property, and on the appointment—

- (a) two or more trustees may be appointed concurrently;
- (b) the number of trustees shall not be increased beyond four.

(6) Except as provided by the instrument, if any, creating the trust, or by any statutory enactment to the contrary, it shall not be obligatory to appoint any additional trustee.

(7) Subsections seven, eight, ten, twelve, thirteen, and fourteen of section six of this Act shall apply to the appointment of an additional trustee.

Retirement.

Retirement.
56 & 57 Vic.,
c. 53, s. 11.
1902, No. 98,
ss. 5, 6.

8. (1) A trustee may by registered deed retire from the trust without any new trustee being appointed in his place.

(2) A trustee may not so retire, unless his co-trustees and such other person, if any, as is empowered to appoint trustees, consent by the same or other registered deed to the retirement, and there will be left after the retirement at least two continuing trustees, or the public trustee, or a trustee company, to perform the trust.

(3) Two or more trustees may retire concurrently.

(4) By the retirement the trustee shall be discharged from the trust, provided that, if in order to vest any part of the trust property in the continuing trustees alone, it is necessary that it should be duly transferred, the retiring trustee shall not be discharged in respect of that part until it is duly transferred.

(5)

(5) At any time after the registration of the deed or deeds of consent and retirement the continuing trustees shall have the same powers authorities and discretions, and may in all respects act as if the retiring trustee were wholly discharged from the trust.

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(6) Any conveyance or thing required for vesting the trust property in the continuing trustees alone shall be executed or done.

(7) Nothing in this section shall authorise any retirement from the office of an executor or administrator.

(8) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(9) This section applies to trusts created either before or after the commencement of this Act.

Vesting on appointment and retirement.

9. (1) Where a new trustee is appointed, the execution and registration of the deed of appointment shall without any conveyance, except as otherwise provided in this section, vest in the persons who become and are the trustees for performing the trust, as joint tenants and for the purposes of the trust, the trust property for which the new trustee is appointed.

Vesting.
56 & 57 Vic.,
c. 53, s. 12.
1902, No. 98,
s. 5.

(2) Where a trustee retires, the execution and registration of the deed or deeds of consent and retirement shall without any conveyance, except as otherwise provided in this section, vest in the continuing trustees alone as joint tenants and for the purposes of the trust, all the trust property which is jointly vested in the continuing trustees and the retiring trustee.

(3) In the case of land subject to the provisions of the Real Property Act, 1900, the property shall not vest until either—

- (a) the appropriate transfer is executed and registered, so that the property is duly transferred; or
- (b) an entry of the vesting is made by the Registrar-General.

Any

George V,
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(4) In the following cases the property shall not vest until the appropriate transfer is executed and registered so that the property is duly transferred, that is to say, in the case of—

12 & 13
(Geo. V, c. 16,
s. 112 (3).

(a) any property comprised in a mortgage for securing money subject to the trust, where the property is not either land subject to the provisions of the Real Property Act, 1900, or land conveyed on trust for securing debentures or debenture stock ;

(b) any property subject to the provisions of the Closer Settlement Acts, or the Mining Act, 1906, or the Crown Lands Consolidation Act, 1913, or any other Act relating to Crownlands ;

(c) any property a conveyance of which is required to be registered by or under any Act, whether of this State or otherwise, other than the Acts mentioned in paragraphs (a) and (b) of this subsection.

(5) In the case of any property that is only transferable in books kept by a corporation company or other body, or in manner directed by or under any Act, whether of this State or otherwise, the property shall not vest until it is duly transferred.

Ibid. s. 112
(4).

(6) In the case of land held under a lease which contains any covenant condition or agreement against assignment or disposing of the land without license or consent, the land shall not vest until it is duly transferred, unless—

(a) before the execution of the deed of appointment, or the deed or deeds of consent and retirement, as the case may be, the requisite license or consent to the assignment or disposition has been obtained ; or

(b) by virtue of any statute or rule of law the vesting would not operate as a breach of covenant or give rise to a forfeiture.

In this subsection "lease" includes an underlease and an agreement for a lease or underlease.

(7)

(7) If any property does not vest under this section until transfer or registration, the execution and registration of the deed of appointment, or of the deed or deeds of consent and retirement, as the case may be, shall nevertheless vest the right to call for a transfer of the property, and to sue for or recover the property.

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(8) This section extends to an appointment by deed, or a retirement by deed, under the provisions of the instrument, if any, creating the trust.

(9) This section applies to trusts created either before or after the commencement of this Act.

Disclaimer, and ceasing to be executor.

10. (1) If a person who is appointed by will both executor and trustee thereof renounces probate, or after being duly cited fails to apply for probate, the renunciation or failure shall be deemed to be a disclaimer of the trust contained in the will.

Renunciation
of probate.

(2) Where there is any such renunciation or failure, or any such person dies before probate is granted to him, or instead of applying for probate authorises the public trustee or a trustee company to apply for administration with the will annexed, and administration with the will annexed is granted solely to the public trustee or the trustee company, the public trustee or the trustee company, as the case may be, shall by virtue of the grant and without any further appointment be deemed to be appointed trustee of the will in the place of the person thereby appointed.

(3) This section applies only to a renunciation failure or grant after the commencement of this Act.

11. (1) If any property is vested in any person as executor of a will under which he is the trustee of the property or is beneficially entitled thereto, such person may, at any time after all the executorial duties with respect to the property have been duly performed, declare by registered instrument in writing that he has ceased to hold the property as executor and that he holds the same as trustee or as beneficiary, as the case may be.

Ceasing to be
executor.

(2)

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(2) Where a declaration is so made, the property shall, except as otherwise provided in this section, be deemed to be held in accordance with the declaration.

(3) In the case of land subject to the provisions of the Real Property Act, 1900—

(a) where a declaration is so made that the executor holds as trustee, the property shall not be deemed to be so held until the Registrar-General enters a caveat forbidding the registration of any instrument not in accordance with the trusts and provisions declared and contained in the will so far as concerns the land affected by the declaration ;

(b) where a declaration is so made that the executor holds as beneficiary, the property shall not be deemed to be so held until the Registrar-General withdraws any inconsistent caveat.

(4) This section applies to wills made either before or after the commencement of this Act, and whether the executorial duties have been performed before or after the commencement of this Act.

Registration.

Registration.
56 & 57 Vic.,
c. 53, s. 12.

12. (1) Any instrument by which a new trustee is appointed, or by which a trustee retires or disclaims, or by which an executor declares that he holds as trustee or as beneficiary, as the case may be, may be registered in the office of the Registrar-General in the manner and on payment of the fees prescribed by regulation under the Conveyancing Act, 1919.

(2) This section extends to an appointment or retirement, whether under this Part or under the provisions of the instrument creating the trust or otherwise, and to a consent to an appointment or retirement.

(3) This section applies whether the trust does or does not relate to land subject to the provisions of the Real Property Act, 1900.

(4) In the case of land subject to the provisions of the Real Property Act, 1900, where an appointment or retirement or an instrument by which an executor declares

declares that he holds as trustee or as beneficiary, as the case may be, is registered, the Registrar-General is hereby authorised and directed to make an entry of the vesting of the trust property or to enter vary and withdraw caveats as may be proper in the circumstances :

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Provided that the Registrar-General shall not be bound so to do until a written request is made to him by the persons in whom the property is to be vested, such evidence is given as he may reasonably require, and such notice, if any, is given to any other person as he may direct.

(5) Nothing in this section shall prevent an appointment retirement disclaimer or other instrument from being registered under any law now in force.

(6) This section applies to instruments executed either before or after the commencement of this Act.

13. (1) A statement contained in any registered deed by which a new trustee is appointed, to the effect that a trustee has remained out of New South Wales for more than one year without having properly delegated the execution of the trust, or has remained out of New South Wales for more than two years, or refuses or is unfit to act, or is incapable of acting, shall, in favour of a subsequent purchaser in good faith, be conclusive evidence of the matter so stated upon any question as to the validity of the appointment and of any vesting consequent thereon.

Protection of
purchasers.
12 & 13
Geo. V, c. 16,
s. 111.

(2) A statement contained in any registered instrument by which an executor declares that he holds any property as trustee or as beneficiary, as the case may be, to the effect that all the executorial duties with respect to the property have been duly performed, shall in favour of a subsequent purchaser in good faith be conclusive evidence of the matter so stated upon any question as to the capacity in which the property was held.

(3) The protection afforded by this section shall extend to the Registrar-General Crown Solicitor or other person registering or certifying title.

(4) This section applies to deeds executed either before or after the commencement of this Act.

DIVISION

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DIVISION 2.—*Powers and duties.*

Investment.

Authorised
investments.
56 & 57 Vic.,
c. 53, ss. 1, 2.
1898, No. 4,
s. 4.

14. (1) A trustee, unless expressly forbidden by the instrument, if any, creating the trust, may invest any trust funds in his hands, whether at the time in a state of investment or not, in any of the securities authorised by this Act.

(2) The securities authorised by this Act shall be the following, namely—

1906, No. 48,
s. 49.

1919, No. 41,
s. 191 (1).

- (a) any public funds or Government stock or Government securities of the Commonwealth of Australia, or any State thereof, or the Dominion of New Zealand, or Fiji;
- (b) any debentures or securities guaranteed by the Government of New South Wales;
- (c) any debentures or securities issued by the municipal council of Sydney or any municipal or shire council in New South Wales;
- (d) any public funds or parliamentary stocks or Government securities of the United Kingdom;
- (e) mortgage of land in New South Wales;
- (f) deposit in the Commonwealth Bank of Australia or in the Government Savings Bank of New South Wales;
- (g) any of the stocks funds or securities for the time being authorised for the investment of cash under the control or subject to the order of the Court.

Vict. Act
2,741, ss. 4, 5.

(3) In the case of any of the securities mentioned in paragraphs (a) (b) (c) and (d) of subsection two of this section a trustee may invest—

- (a) notwithstanding that the security may be redeemable, and that the price paid therefor by him exceeds the redemption value; or
- (b) if the security is not redeemable, notwithstanding that the price paid therefor by him exceeds the value thereof at par.

(4)

(4) A trustee may not under the powers conferred by this section— George V,
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- (a) purchase at a price exceeding its redemption value any security which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate; or
- (b) purchase any security which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

Where a purchase includes the right to receive any interest accrued from a security, though the interest may not then be due, the price shall mean the purchase money less the amount of the accrued interest.

The provisions of paragraph (a) of this subsection shall not apply to any Government security of the Commonwealth of Australia or of this State.

(5) Where any redeemable security has been purchased in accordance with the powers of this Act or the instrument, if any, creating the trust, the trustee may retain the security until redemption.

(6) Where any security has been so purchased, ^{Vict. Act} the trustee may at any time sell and dispose of the ^{2,741, ss. 4, 5.} security at a price less than its redemption value, or less than its value at par in case it is not redeemable.

(7) A trustee, unless expressly forbidden by the ^{15 Geo. V,} instrument, if any, creating the trust, may, notwithstanding that the security is payable to bearer, retain or ^{c. 5, 5th Sch.} invest in any of the securities authorised by this Act, and where any security is payable to bearer the provisions of this subsection shall apply, that is to say—

- (a) unless the trustee is the public trustee or a trustee company, the trustee shall, until the security is sold, deposit it for safe custody and collection of income with a bank;
- (b) the trustee shall not be responsible for any loss incurred by reason of the deposit, and any sum payable in respect of the deposit and collection may be paid out of the income of the trust property;

(c)

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(c) the trustee shall not be deemed to be expressly forbidden to retain or invest in the security by reason only of a direction that investments shall be retained or made in the name of the trustee.

1913, No. 7,
s. 53.

(8) A trustee may not under the powers of this section invest on mortgage of land except by way of first legal mortgage of the fee simple, but may invest on mortgage of a conditional purchase under the Crown Lands Acts with respect to which a certificate has been issued to the effect that all conditions attaching thereto, except payment of the balance of the purchase money, have been duly complied with.

1906, No. 48,
s. 9.

(9) In the case of deposit in a bank, a trustee may invest for a fixed period or otherwise.

(10) A trustee, unless expressly forbidden by the instrument, if any, creating the trust may from time to time vary any investment.

56 & 57 Vic.,
c. 53, s. 3.

(11) The powers conferred by this section shall be exercised according to the discretion of the trustee with due regard to the circumstances of the trust, but subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

Ibid. s. 3.

1906, No. 48,
s. 59.

(12) The powers conferred by this section shall be in addition to the powers conferred by any Act or by the instrument, if any, creating the trust.

(13) This section applies to trusts created either before or after the commencement of this Act.

Interim
investment.
12 & 13
(Geo. V, c. 16,
s. 120 (1).

15. (1) A trustee may, pending the negotiation and preparation of any security or during any other time while an investment is being sought for, or pending distribution, or pending application for any purpose authorised by the instrument, if any, creating the trust or by law, pay any trust money to the Colonial Treasurer or to any bank or corporation prescribed by rules of court to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.

(2) Nothing in this section shall affect the liability, if any, of the trustee for leaving trust money uninvested.

(3)

(3) This section applies only if and as far as a **George V,** contrary intention is not expressed in the instrument, if **No. 14.** any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies to trusts created either before or after the commencement of this Act.

16. (1) A trustee lending money on the security of Loan for fixed period. any property on which he can lawfully lend may lend 12 & 13 Geo. V, c. 16, s. 119 (1). for any period not exceeding five years, or may contract that the money shall not be called in during any period not exceeding five years, from the time in either case when the loan was made, provided that the loan is made in accordance with this section.

(2) The terms upon which the loan is made shall, in addition to such other provisions as the trustee may deem proper, include provisions for giving effect to the following:—

- (a) that interest shall be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due;
- (b) that the borrower shall maintain and protect the property, and keep all buildings, if any, thereon insured against loss or damage by fire to the full insurable value thereof;
- (c) that if the borrower fails to comply with any term of the mortgage, the whole of the moneys secured by the mortgage shall immediately become due and payable.

(3) The trustee may, on such terms, if any, as he deems proper, by writing waive or vary any right arising from failure to comply with any term of the mortgage within the proper time.

(4) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(5) Where the loan is made under the order of the Court, the provisions of this section shall apply, unless the Court, or on any reference to the Master in Equity, the Master shall otherwise direct.

(6)

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(6) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(7) This section applies to trusts created either before or after the commencement of this Act.

Accepting a
short title.
56 & 57 Vic.,
c. 53, s. 8 (3).
1902, No. 98,
s. 2.

17. (1) A trustee shall not be chargeable with breach of trust upon the ground only that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special condition, entitled to require, if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted.

(2) This section extends to transfers of existing securities as well as to new securities.

(3) This section applies to investments made either before or after the commencement of this Act.

Ratio of loan
to value.
56 & 57 Vic.,
c. 53, s. 8.

18. (1) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that the loan was made in accordance with this section.

(2) In making the loan the trustee must have acted upon either—

- (a) a certificate of valuation under the Valuation of Land Act, 1916; or
- (b) a report as to the value of the property made by a person whom he reasonably believed to be a competent valuer instructed and employed by the trustee independently of any owner of the property, whether the valuer carried on business in the locality where the property is situate or elsewhere.

(3) The amount of the loan must not exceed two equal third parts of the value of the property as stated in the certificate or report.

(4)

(4) In the case of a report the loan must have been made under the advice of the valuer expressed in the report. George V,
No. 14.

(5) This section extends to transfers of existing securities as well as to new securities.

(6) This section applies to investments made either before or after the commencement of this Act.

19. (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest. Loss on
authorised
security.
56 & 57 Vic.,
c. 53, s. 9 (1).
1902, No. 98,
s. 3.

(2) This section extends to transfers of existing securities as well as to new securities.

(3) This section applies to investments made either before or after the commencement of this Act. 56 & 57 Vic.,
c. 53, ss. 5, 8 (4),
9 (2).
1902, No. 98, s. 4.

20. (1) Where any property is vested in a trustee by way of security and the trustee has power under this Act or otherwise to invest on mortgage and to vary investments, the trustee may release part of the property from the mortgage, whether any part of the mortgage debt is repaid or not, provided that the unreleased part of the property would at the time be a proper investment in all respects for the amount remaining unpaid. Release of
part of the
security.

(2) A subsequent purchaser of the released part of the property, or the Registrar-General Crown Solicitor or other person registering or certifying title, shall not be concerned to inquire whether the release was authorised by this section.

(3) This section applies to securities created either before or after the commencement of this Act.

21. (1) Where any security of a company is held by a trustee, and the trustee can lawfully hold or retain the same, the trustee may, in like manner as if he were beneficially entitled to the security, concur in any scheme or arrangement— Arrangement
with
company.
12 & 13
(Geo. V, c. 16,
s. 119 (3)).

- (a) for the reconstruction of the company; or
- (b)

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- (b) for the amalgamation of the company with any other company ; or
- (c) for the sale of all or any part of the property and undertaking of the company to any other company ; or
- (d) for the release modification or variation of any rights privileges or liabilities attached to the security.

(2) In lieu of or exchange for the security the trustee may accept any security of any denomination or description of the reconstructed or new or purchasing company.

(3) The trustee shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may hold and retain any security so accepted in like manner as he could have done if the same had been an investment authorised by the instrument, if any, creating the trust or by law.

(4) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by the instrument, if any, creating the trust or by law.

(5) Anything done by a trustee before the commencement of this Act which would have been authorised by this section if then in force shall be deemed to have been and is hereby authorised by this Act.

(6) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(7) This section applies to trusts created either before or after the commencement of this Act.

New shares
in a company.
12 & 13
Geo. V, c. 16,
s. 119 (4).

22. (1) Where a preferential right to subscribe for a security in a company is offered to a trustee in respect of any holding in the company, he may—

- (a) exercise the right and apply capital money subject to the trust in payment of the consideration ; or
- (b) renounce the right ; or

(c)

(c) assign the benefit of the right for the best consideration that can reasonably be obtained to any person, including a beneficiary under the trust. George V,
No. 14.

(2) Where a trustee assigns the benefit of the right the consideration received by him for the assignment shall be held as capital money of the trust.

(3) The trustee shall not be responsible for any loss occasioned by any act or thing so done in good faith.

(4) The powers conferred by this section shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6) This section applies to trusts created either before or after the commencement of this Act.

23. (1) A trustee may apply capital money subject to a trust in payment of the calls on any shares subject to the trust. Calls on
shares.
12 & 13
Geo. V, c. 16,
s. 120 (3).

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3) This section applies to trusts created either before or after the commencement of this Act.

24. (1) Where any payment received by a trustee in respect of a sale of debentures or inscribed stock bearing interest at a fixed rate shall be or include payment for the right to receive any interest accrued from the debentures or stock at the time of the sale, though the interest may not then be due, the amount of the accrued interest shall for the purposes of the trust be deemed to have been received as interest in respect of the period during which the interest so accrued. Accrued
interest on
debentures
or stock sold
or purchased.
Vict. Act
3,261, ss. 2, 3.

(2) Where any payment made by a trustee in respect of a purchase of any debentures or inscribed stock bearing interest at a fixed rate shall be or include payment

George V, No. 14. payment for the right to receive any interest accrued from the debentures or stock at the time of the purchase, though the interest may not then be due, the amount of the accrued interest when received shall for the purposes of the trust be deemed to have been received as purchase money repaid.

(3) In this section debentures or inscribed stock include any of the securities mentioned in paragraphs (a) (b) (c) and (d) of subsection two of section fourteen of this Act.

(4) Anything done by a trustee before the commencement of this Act which would have been authorised by this section if then in force shall be deemed to have been and is hereby authorised by this Act.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6) This section applies to trusts created either before or after the commencement of this Act.

Continued holding.
57 & 58 Vic.,
c. 10, s. 4.

25. (1) A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument, if any, creating the trust or by law.

(2) This section applies to investments made either before or after the commencement of this Act.

Sale and other dealings.

Powers incident to sale.
56 & 57 Vic.,
c. 53, s. 13.
1898, No. 4,
ss. 9, 10.

- 26.** (1) A trustee for sale may—
- (a) sell all or any part of the trust property ;
 - (b) sever and sell fixtures apart from the balance of the property ;
 - (c) grant and sell any easement right or privilege of any kind over or in relation to the property ;
 - (d) do anything that a mortgagee may do under subsection one of section one hundred and ten of the Conveyancing Act, 1919, to the like extent as if the powers conferred by that subsection on a mortgagee in relation to the mortgaged

mortgaged property or any part thereof were in terms conferred by this subsection on the trustee in relation to the trust property or any part thereof ;

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- (e) join with any other person in doing anything under any of the preceding paragraphs of this subsection ;
- (f) pay or apply capital money subject to the trust for any of the purposes mentioned in this subsection.

(2) The sale may be subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, and may be—

- (a) either subject to prior charges or not ;
- (b) either together or in lots, in subdivision or otherwise ;
- (c) by public auction or by private contract.

(3) The trustee may vary any contract for sale, buy in at any auction, rescind any contract for sale and re-sell, without being answerable for any loss.

(4) If the trustee joins with any other person in selling, the purchase money shall be apportioned in or before the contract of sale, and a separate receipt shall be given by the trustee for the apportioned share.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6) This section applies to trusts or powers created either before or after the commencement of this Act.

27. (1) Where the instrument creating a trust or power to sell property does not expressly limit the duration of the trust or power, the trustee may, if so requested in writing by any beneficiary, sell the property under the authority conferred by this section and shall be deemed to be a trustee for sale accordingly, notwithstanding that all the beneficiaries are absolutely entitled to the property in fee simple or full ownership in possession and are free of any incapacity, but in all other

Duration of
trust or
power to sell.

George V, other respects the authority conferred by this section
No. 14. shall be subject to any restrictions to which the power
or trust created by the instrument is subject.

(2) Nothing in this section shall affect any trust or power to sell which is for the time being in existence under the instrument creating the trust or power.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies to trusts or powers created either before or after the commencement of this Act.

Deferred
payment on
sale of land.

28. (1) A trustee for sale may sell land on terms of deferred payment or otherwise.

(2) The terms of deferred payment may provide either for the purchase money being paid by instalments, or for the unpaid purchase money being secured by mortgage.

(3) If the purchase money is to be paid by instalments, the terms upon which the land is sold shall, in addition to such other provisions as the trustee may deem proper, include provisions for giving effect to the following :—

- (a) that part of the purchase money shall be paid on the execution of the contract of sale ;
- (b) that the balance of the purchase money shall be payable in equal instalments, the first not later than two years from the date of the contract of sale and the others at intervals of not more than a year beginning from the date on which the first instalment is payable, and shall bear interest payable half-yearly or oftener on the amount from time to time unpaid ;
- (c) that the whole of the purchase money and interest shall be payable within a period not exceeding ten years from the date of the contract of sale ;
- (d) that if any instalment or interest or part thereof is in arrear and unpaid for six months

or

or for such less period as may be specified, the whole of the purchase money shall become due and payable. **George V., No. 14.**

(4) If the unpaid purchase money is to be secured by mortgage, the terms upon which the land is sold shall, in addition to such other provisions as the trustee may deem proper, include provisions for giving effect to the following:—

- (a) that part of the purchase money shall be paid on the execution of the contract of sale;
- (b) that the unpaid purchase money shall be secured by a registered mortgage of the land sold, with or without the security of any other property, and shall bear interest payable half-yearly or oftener on the amount from time to time unpaid;
- (c) that the mortgage shall contain covenants by the mortgagor to pay the principal money secured and the interest thereon, to maintain and protect the property, and to keep all buildings, if any, thereon insured against loss or damage by fire to the full insurable value thereof;
- (d) that notwithstanding section one hundred and six of the Conveyancing Act, 1919, the mortgagor shall not have power to make any lease of the property, unless the trustee consents in writing.

(5) Whether the purchase money is to be paid by instalments or the unpaid purchase money is to be secured by mortgage, the trustee shall not be deemed to be lending money within the meaning of section eighteen of this Act so as to be bound to act in accordance with the provisions of that section, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage.

(6) The part of the purchase money to be paid on the execution of the contract of sale shall not be less than the sum which a person acting with prudence would, if the land were his own, have accepted in the circumstances in order to sell the land to the best advantage.

(7)

*cf. Permanen
Trustee Co.
v. Angus,
17 S.R., 364.*

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No. 14.

(7) The trustee shall not be bound to require payment of any greater part of the purchase money before letting the purchaser into possession, or before conveying the land and taking a mortgage back, than a person acting with prudence would, if the land were his own, have considered as sufficient, provided that the trustee shall not convey the land and take a mortgage back until at least one-tenth part of the purchase money has been paid.

(8) Notwithstanding that the purchase money is to be paid by instalments, the trustee may at any time after one-tenth of the purchase money has been paid convey the land and take a mortgage back in any case where a person acting with prudence would, if the land were his own, have been willing in the circumstances so to do, and in any such case the mortgage shall be in accordance with paragraphs (b) (c) and (d) of subsection four of this section, and the provisions of subsection five of this section shall apply.

(9) Any mortgage under this section may be for any period not exceeding ten years from the date of the contract of sale.

(10) The trustee may, on such terms, if any, as he deems proper, by writing waive or vary any right arising from failure to comply with any term of the contract of sale or of any mortgage under this section within the proper time.

(11) Where the sale is made under the order of the Court, the provisions of this section shall apply, unless the Court, or on any reference to the Master in Equity, the Master shall otherwise direct.

(12) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(13) This section applies to trusts created either before or after the commencement of this Act.

Sale or purchase
under
Conveyancing
Act, 1919.
56 & 57 Vic.,
c. 53, s. 15.

29. (1) A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of subsection two of section fifty-three of the Conveyancing Act, 1919.

(2)

(2) This section shall be deemed to have **George V,**
 applied as from the commencement of that Act. **No. 14.**

30. (1) Where a trustee sells subject to any condi- Depreciatory
 tion which may have been unnecessarily depreciatory— conditions.
 56 & 57 Vic.,
 c. 53, s. 14.

- (a) the purchaser shall not be at liberty to make any objection to the title on that ground ;
- (b) the sale shall not be impeached by any beneficiary upon that ground, unless it also appears that the consideration for the sale was thereby rendered inadequate ;
- (c) the sale shall not, after the execution of the conveyance, be impeached as against the purchaser upon that ground, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(2) This section applies to sales made either before or after the commencement of this Act.

31. (1) A trust or power to sell or dispose of land Sale of part
 includes a trust or power to sell or dispose of part of land.
 12 & 13
 Geo. V, c. 16;
 s. 120 (9).
 thereof, whether the division is horizontal, vertical, or otherwise.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3) This section applies to trusts or powers created either before or after the commencement of this Act.

32. (1) Where a trustee is authorised by the instru- Sale
 ment, if any, creating the trust or by law to dispose of exchange
 and partition.
 45 & 46 Vic.,
 c. 38, s. 17 ;
 56 & 57 Vic.,
 c. 53, s. 44 ;
 57 & 58 Vic.,
 c. 10, s. 3 ;
 1916, No. 40,
 s. 2 ;
 1919, No. 6,
 s. 110.
 land by way of sale exchange or partition, he may so
 dispose—

- (a) of the land with or without an exception or reservation of all or any of the mines and minerals therein ; or
- (b) of any mines and minerals.

(2) The disposition may be with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage, and other powers,

George V, No. 14. powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the land or any part thereof, or any other land.

(3) The exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

1898, No. 4,
s. 9.

(4) The exchange or partition may be made upon terms of giving or receiving any money for equality of exchange or partition.

1898, No. 4,
s. 11.

(5) For the purpose of completing the disposition the trustee may convey or otherwise dispose of the land either by way of revocation and appointment of the use or otherwise as may be necessary.

(6) This section extends to any other person authorised to dispose of land by way of sale exchange or partition.

(7) This section applies to trusts or powers created either before or after the commencement of this Act.

Sale after
right of
redemption
barred.

1 & 2 (Geo. V,
c. 37, s. 9.

33. (1) Where any property is vested in a trustee by way of security, and the property becomes discharged from the right of redemption, the trustee shall hold the property on trust for sale, with power to postpone the sale for such a period as he may think proper.

(2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable.

(3) This section shall not affect any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

(4) This section shall not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.

(5) This section applies whether the property is discharged from the right of redemption by virtue of the statutes of limitation or of an order for foreclosure or otherwise.

(6)

(6) This section extends to securities by way of mortgage of land under the Real Property Act, 1900, and in relation thereto an order for foreclosure includes an order for foreclosure under that Act. George V,
No. 14.

(7) This section applies whether the property has become or becomes discharged from the right of redemption before or after the commencement of this Act.

34. (1) Where an equity of redemption is vested in a trustee and the mortgaged property is not of greater value than the amount of the mortgage debt, the trustee may release the equity of redemption to the mortgagee in discharge of the mortgage debt or part thereof. Release of
equity of
redemption
in discharge
of mortgage
debt.

(2) The trustee shall not be chargeable with breach of trust nor shall the release be impeached by any beneficiary upon the ground only that the mortgaged property was of greater value than the amount of the mortgage debt or of the part thereof discharged, provided that the trustee has acted bona fide and on the advice of a person whom he reasonably believed to be a competent valuer instructed and employed independently of the mortgagee, whether the valuer carried on business in the locality where the property is situate or elsewhere.

(3) A subsequent purchaser or the Registrar-General Crown Solicitor or other person registering or certifying title shall not be concerned to inquire whether the release was authorised by this section.

(4) This section applies whether the equity of redemption vested in the trustee before or after the commencement of this Act.

35. (1) Where a leasehold is vested in a trustee and the property is subject to onerous covenants of such a nature that it would not be in the interests of the beneficiaries to retain the property, the trustee may surrender or concur in surrendering the lease. Surrender of
onerous lease.

(2) The trustee shall not be chargeable with breach of trust nor shall the surrender be impeached by any beneficiary upon the ground only that the covenants were not of such a nature, provided that the trustee has acted bona fide and on the advice of a person whom he reasonably believed to be a competent valuer instructed
and

George V, and employed independently of the lessor, whether the
No. 14. valuer carried on business in the locality where the property is situate or elsewhere.

(3) A subsequent purchaser or the Registrar-General Crown Solicitor or other person registering or certifying title shall not be concerned to inquire whether the surrender was authorised by this section.

(4) This section applies whether the leasehold vested in the trustee before or after the commencement of this Act.

Leasing.

36. (1) A trustee may make a lease of land in possession in any of the following cases, that is to say—

- (a) where he holds the land with power to manage the same, or upon trust for sale with an express power to postpone the sale, the lease may be for any term not exceeding five years;
- (b) where he holds the land without power to manage the same, or upon trust for sale without an express power to postpone the sale, the lease may be for any term not exceeding three years.

(2) A trustee shall not be deemed to hold land with power to manage the same within the meaning of this section by reason only of the fact that it is proper to postpone sale in order to sell to the best advantage and in the meantime to manage the land.

(3) Any lease which a trustee is authorised to make under this section or under the instrument, if any, creating the trust or power may—

- (a) provide for a rent increasing at such times as may be specified in the lease;
- (b) give an option of renewal, provided that the duration of the lease and any such renewal shall not in the aggregate exceed the term for which the trustee is authorised to make the lease.

(4) If the land is the subject of a settlement within the meaning of Part IV of the Conveyancing and Law of Property Act, 1898, and there is any other person authorised by the settlement or by that Act to demise the land or any part thereof, this section shall not apply unless that person in writing authorises the trustee to make the lease. (5)

(5) Subsections four, five, six, seven, eight, and ten of section one hundred and six of the Conveyancing Act, 1919, shall apply to any lease under this section :

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Provided that if the land includes premises licensed under the Liquor Act, 1912, a bonus or fine may be taken in respect of the lease, and the trustee shall apportion the same over the period of the lease as if it were rent, but no person paying any such bonus or fine shall be concerned to see that any such apportionment is made.

(6) This section shall not apply to a bare trustee for persons all of whom are entitled in possession and are free of any incapacity.

(7) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8) This section applies to trusts created either before or after the commencement of this Act.

37. (1) Where a leasehold for lives or for years is vested in a trustee and the lease is renewable from time to time, either under any covenant or contract, or by custom or usual practice, the trustee may obtain from time to time the renewal on the accustomed and reasonable terms.

Renewal of
renewable
leasehold.
56 & 57 Vic.,
c. 53, s. 19;
1898, No. 4,
ss. 15, 16.

(2) If required in writing by any person having any beneficial interest present future or contingent in the leasehold, the trustee shall use his best endeavours to obtain from time to time the renewal on such terms.

(3) The trustee may from time to time make or concur in making a surrender of the lease for the time being subsisting, and may do all such other acts as are requisite for the renewal.

(4) If by the terms of the instrument, if any, creating the trust the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal.

(5) The trustee may pay or apply capital money subject to the trust for the purpose of obtaining the renewal.

D

(6)

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No. 14.

(6) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(7) This section applies to trusts created either before or after the commencement of this Act.

Raising
money.
12 & 13
Geo. V, c. 16,
s. 122 (1).
15 Geo. V,
c. 5, s. 5, 5th
Sch., Pt. I(5).

38. (1) Where a trustee is authorised by the instrument, if any, creating the trust or by law to pay or apply capital money for any purpose or in any manner, he shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession held upon the same trusts as the capital money.

(2) This section shall not apply to a trustee of property held for charitable purposes.

Protection of
purchasers or
mortgagees.
12 & 13
Geo. V, c. 16,
s. 124.

39. No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in a trustee, shall be concerned to see that the money is wanted, or that no more than is wanted is raised, or to see to the application thereof.

Property not in possession.

Powers.
12 & 13
Geo. V, c. 16,
s. 120 (4).

40. (1) Where trust property consists of or includes any share or interest in property or the proceeds of the sale of property not vested in the trustee, or any other thing in action, the trustee on the same falling into possession, or becoming payable or transferable—

- (a) may agree upon or ascertain the amount or value thereof or any part thereof in such manner as he may think fit;
- (b) may accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which he shall think fit, any securities authorised by the instrument, if any, creating the trust or by law for the investment of money subject to the trust;
- (c) may allow any deductions for duties costs charges and expenses which he may think proper or reasonable; and
- (d)

- (1) may execute any release in respect of the premises, so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release.

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No. 14.

The trustee shall not be responsible for any loss occasioned by any act or thing so done by him in good faith.

(2) Unless and until required in writing so to do by some person beneficially interested under the trust or by the guardian of his person or estate, and unless also due provision is made to his satisfaction for payment of the costs of any proceedings required to be taken, the trustee shall not be under any obligation—

- (a) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action is derived payable or charged; or
- (b) to take any proceedings on account of any act default or neglect on the part of the persons in whom the securities or other property or any of them or any part thereof are for the time being or had at any time been vested.

(3) The trustee may if he thinks fit refer any of the matters mentioned in subsection two of this section to the person beneficially entitled or to the guardian of his person or estate.

(4) The trustee shall not be chargeable with breach of trust by reason of any omission in any of the matters mentioned in subsection two of this section, except when required and upon due provision made as therein mentioned.

(5) Nothing in this section shall relieve a trustee of the obligation to get in and obtain payment or transfer of any such share or interest or other thing in action on the same falling into possession.

(6) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(7) This section applies to trusts created either before or after the commencement of this Act.

Insurance.

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Insurance.
56 & 57 Vic.,
c. 53, s. 18.
Vict. Act
No. 2,741,
s. 22.

Insurance.

41. (1) A trustee may insure against loss or damage, whether by fire or otherwise, any insurable property, and against any risk or liability against which it would be prudent for a person to insure if he were acting for himself.

(2) The insurance may be for any amount, provided that, together with the amount of any insurance already on foot, the total shall not exceed the insurable value or liability.

(3) The premiums may be paid by the trustee out of the income of the property concerned or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to the income.

(4) This section applies if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(5) This section applies to trusts created either before or after the commencement of this Act.

Application
of insurance
money.
12 & 13
Geo. V, c. 16,
s. 126.

42. (1) Where a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, has been kept up under any trust in that behalf, or under any power statutory or otherwise, or in performance of any obligation statutory or otherwise, the money receivable by a trustee under the policy shall be capital money for the purposes of the trust.

(2) If the money is receivable in respect of property held upon trust for sale, the same shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under the trust.

(3) In any other case the money shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) The money or any part thereof may also be applied by the trustee or, if in court, under the direction of the Court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged.

(5)

(5) Any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

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(6) Nothing in this section shall prejudice or affect the right of any person to require the money or any part thereof to be applied in rebuilding, reinstating or repairing the property lost or damaged.

(7) Nothing in this section shall prejudice or affect the rights of any mortgagee lessor or lessee, whether under any statute or otherwise.

(8) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(9) This section applies to trusts and to policies created or effected either before or after the commencement of this Act, but only to money received after the commencement of this Act.

Maintenance, advancement, and protective trusts.

43. (1) Where any property is held in trust for a person who is for the time being an infant for any interest whatsoever, whether vested or contingent, and whether absolute or liable to be divested, the trustee may at his sole discretion pay to the parent or guardian, if any, of the infant, or to the person with whom the infant is for the time being residing, or otherwise apply the whole or any part of the income of the property, for or towards the maintenance education or benefit of the infant.

Maintenance
and accumu-
lation.
12 & 13
Geo. V, c. 16,
s. 88.

(2) The power conferred by subsection one of this section may be exercised whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the maintenance or education of the infant, or not.

(3) The power conferred by subsection one of this section shall not prejudice or affect any prior interest in or charge over the property:

Provided

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Provided that where the interest for which the property is held in trust for the infant is future or contingent, and the trust for the infant would not, apart from the provisions of this section, carry the intermediate income, and the same is not expressly or specifically disposed of but would pass to some other person in virtue only of an interest to which he is entitled under a residuary or a general gift in the instrument, if any, creating the trust, or in the absence of such a gift then as upon intestacy or as upon a resulting trust, the trust for the infant shall, during the infancy, if the interest of the infant so long continues, be deemed to carry the intermediate income, and the interest of such person shall not be deemed to be a prior interest within the meaning of this subsection.

(4) During the infancy, if the interest of the infant so long continues, the trustee shall accumulate all the residue of the income in the way of compound interest by investing the same, and the resulting income thereof from time to time on securities on which he is by the instrument, if any, creating the trust, or by law authorised to invest the trust money.

(5) During the infancy, if the interest of the infant so long continues, the trustee may at any time, if he thinks fit, apply the accumulations or any part thereof as if the same were income arising in the then current year.

(6) In the following cases the trustee shall hold the accumulations absolutely for the infant, that is to say—

- (a) if otherwise than by virtue of this section the infant is entitled to the income which has been accumulated; or
- (b) if under the provisions of the instrument, if any, creating the trust, the infant is entitled on attaining the age of twenty-one years or on the occurrence of some prior event to a vested interest, whether absolute or liable to be divested, in fee-simple or in full ownership in the property from which the income arose, and the infant in fact becomes entitled to such vested interest.

(7)

(7) Any accumulations held in trust in accordance with subsection six of this section shall be so held without prejudice to any provision with respect thereto contained in any settlement made by the infant under any statute during his infancy. George V,
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(8) Except in the cases mentioned in subsection six of this section, and notwithstanding that the person for whom the property is held in trust had a vested interest in the income by virtue of this section, the trustee shall hold the accumulations as an accretion to the capital of the property from which the accumulations arose, and as one fund with such capital for all purposes, and so that if such property is a settled estate within the meaning of Part IV of the Conveyancing and Law of Property Act, 1898, the accumulations shall be held on the same trusts as if the same were capital money arising therefrom.

(9) This section extends to a vested annuity in like manner as if the annuity were the income of property held by a trustee in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant absolutely.

(10) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(11) This section, and the repeal of section eighteen of the Trustee Act, 1898, apply only where the instrument, if any, creating the trust comes into operation after the commencement of this Act.

44. (1) Where under a trust a person is entitled to the capital of the trust property or any share thereof, the trustee may from time to time pay or apply any capital money subject to the trust, not exceeding altogether in amount one-half of the value of the property or share, for the advancement or benefit of such person in such manner as the trustee shall in his absolute discretion think fit. Advance-
ment.
12 & 13
Geo. V, c. 16,
s. 121.
15 Geo. V,
c. 5, 5th Sch.,
Part II (4).

(2)

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No. 14.

(2) The power conferred by this section may be exercised whether the person is entitled absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and, notwithstanding that the interest of the person so entitled is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs.

(3) The power conferred by this section may be exercised whether the person is so entitled in possession or in remainder or reversion.

(4) If the person is or becomes absolutely and indefeasibly entitled to a share in the trust property, the money so paid or applied shall be brought into account as part of such share.

(5) No such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of full age and consents in writing to the payment or application.

(6) This section applies only where the trust property consists of money or securities or property held upon trust for sale calling in and conversion, and the money or securities or the proceeds of the sale calling in and conversion are not by statute or in equity considered as land, or applicable as capital money for the purposes of Part IV of the Conveyancing and Law of Property Act, 1898.

(7) This section applies only and if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8) This section applies only to trusts created after the commencement of this Act.

Protective
trusts.
12 & 13
Geo. V,
c. 16, s. 115.

45. (1) Income may be directed to be held "on protective trusts" for the benefit of any person (in this section called the principal beneficiary) for the period of his life or for any less period, and where there is such

a direction the income shall during the period (in this section called the trust period), and without prejudice to any prior interest, be held upon trust as provided in this section.

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(2) During the trust period, or until the trust of the income fails or determines during the subsistence of the trust period, the income shall be held upon trust for the principal beneficiary.

(3) The trust of the income shall fail or determine in any of the following cases, as well as on the termination of the trust period, whichever first happens, that is to say, if the principal beneficiary does or attempts to do or suffers any act or thing or if any event happens whereby if the income were payable to the principal beneficiary absolutely, he would be deprived of the right to receive the same or any part thereof.

(4) The trust of the income shall so fail or determine, whether the principal beneficiary does or attempts to do or suffers the act or thing before or after the termination of any prior interest.

(5) The trust of the income shall not so fail or determine by reason of an advance under any statutory or express power.

(6) If the trust of the income fails or determines during the subsistence of the trust period, the income shall during the residue of that period be held upon trust for the application thereof—

- (a) for the maintenance, support, or otherwise for the benefit of all or any one or more exclusively of the other or others of the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any, as the trustee in his absolute discretion thinks fit; or
- (b) if there is no wife husband or issue of the principal beneficiary in existence, then for the maintenance, support, or otherwise for the benefit of all or any one or more exclusively of the other or others of the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the
income

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income thereof or of the annuity fund, if any, or arrears of the annuity, as the case may be, as the trustee in his absolute discretion thinks fit.

(7) This section extends to an annuity or other periodical income payment directed to be held on protective trusts.

(8) Any trust implied by this section may be set aside in any case where an express trust to the same effect might be set aside.

(9) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(10) The section applies only to trusts created after the commencement of this Act.

Appropriation, and payment to the public trustee.

Appropriation.
12 & 13
Geo. V, c. 16,
s. 160;
15 Geo. V,
c. 5, s. 7, 7th
Sch., Part II,
10.

46. (1) A trustee may appropriate any part of the property subject to the trust or of the real or personal estate of a testator or intestate in the actual condition or state of investment thereof in or towards satisfaction of a legacy or of any share or interest in the property or estate, whether settled or not, as to the trustee may seem just and reasonable, according to the respective rights of the persons interested in the property or estate, provided that—

- (a) the appropriation shall not be made so as to affect prejudicially any specific gift devise or bequest;
- (b) the appropriation shall be made with the consent, if any, required by this section;
- (c) in making the appropriation the trustee shall have regard to the rights of any person who may thereafter come into existence or who cannot be found or ascertained at the time of the appropriation or as to whom it is uncertain at that time whether he is living or dead, and of any other person whose consent is not required by this section.

(2)

(2) The power of appropriation conferred by this section shall extend to— George V,
No. 14.

- (a) property over which a testator exercises a general power of appointment;
- (b) setting apart a fund to answer an annuity by means of the income of the fund or otherwise, provided that at the time of appropriation the fund would be sufficient, if it were invested in Government securities of the Commonwealth of Australia at par, to provide an income exceeding the annuity by at least fifteen per centum thereof.

(3) For the purpose of an appropriation under this section the trustee may ascertain and fix the value of the respective parts of the property or estate and the liabilities to which the property or estate is subject as the trustee may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary.

(4) An appropriation made pursuant to this section shall bind all persons interested in the property or estate, including the persons whose consent is not required, and to the extent to which the appropriation is made in or towards satisfaction of the legacy share or interest, the rights to which any person is entitled in virtue of the legacy share or interest shall be restricted to the part of the property or estate so appropriated and shall not extend to any other part thereof.

(5) An appropriation of property, whether it is or is not an investment authorised by law or by the instrument, if any, creating the trust for the investment of money subject thereto, shall not, except as otherwise provided by this section, be made thereunder for the benefit of a person absolutely and beneficially entitled in possession, unless he is of full age and capacity and he consents in writing.

(6) An appropriation shall not, except as otherwise provided in this section, be made thereunder in respect of any settled legacy share or interest, unless either the trustee thereof, if any, not being also the trustee

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George V, trustee making the appropriation, or the person who
No. 14. may for the time being be entitled to the income,
consents in writing.

(7) If the person whose consent is required under subsection five or subsection six of this section, not being the trustee of a settled legacy share or interest—

- (a) is an infant, the consent may be given on his behalf by his parents or parent with whom he resides or in whose custody he is, as the case may be, or by his testamentary or other guardian, or if there is no such parent or guardian, by the Court;
- (b) is an insane or incapable person, the consent may be given on his behalf by his committee or manager, or if there is no such committee or manager, by the Court;
- (c) is an insane patient, the consent may be given on his behalf either by the Master in Lunacy or by the Court;
- (d) is a person who cannot be found or ascertained, or as to whom it is uncertain whether he is living or dead, the consent may be given on his behalf by the Court.

(8) If the appropriation is of an investment authorised by law or by the instrument, if any, creating the trust for the investment of money subject thereto, no consent save of the trustee, if any, of a settled legacy share or interest shall be required on behalf of—

- (a) an infant, where there is no parent or guardian;
- (b) an insane or incapable person or an insane patient, where there is no committee or manager;
- (c) a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time, or as to whom it is uncertain at that time whether he is living or dead.

(9) Where an appropriation is made under this section in respect of a settled legacy share or interest, the property appropriated shall be subject to all trusts
for

for sale and powers of leasing disposition management and varying investments which would have been applicable thereto or to the legacy share or interest in respect of which the appropriation is made, if no such appropriation had been made, provided that nothing in this section shall relieve the trustee of the settled legacy share or interest, where he is not the trustee making the appropriation, from the obligation to obtain payment or transfer of the property appropriated, if or when the same is so payable or transferable.

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(10) Where the exercise of any power of sale conferred on a legal representative by section one hundred and fifty-three of the Conveyancing Act, 1919, is subject to any condition or to the leave of the Court being obtained, the legal representative shall not be entitled to appropriate any part of the real estate under the powers conferred by this section, except with the leave of the Court.

(11) The trustee may make any conveyance or assent which may be necessary for giving effect to an appropriation under this section.

(12) Any disposition of property made in purported exercise of the powers conferred by this section shall, in favour of a purchaser in good faith, be deemed to have been made in accordance with the requirements of this section, and after all requisite consents, if any, have been given.

The protection afforded by this subsection shall extend to the Registrar-General Crown Solicitor or other person registering or certifying title.

(13) In this section a settled legacy share or interest means a legacy share or interest settled by the trust instrument, if any, or by any other instrument, and includes any legacy share or interest to which a person is not absolutely entitled in possession at the date of the appropriation.

(14) In this section a manager means the person appointed under the Lunacy Act, 1898, to undertake the care and management of the property of an incapable person, and an insane patient means an insane patient within the meaning of that Act.

(15)

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(15) This section shall not prejudice any other power of appropriation conferred by law or by the instrument, if any, creating the trust, and the powers conferred by this section shall be in addition to any such power.

(16) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(17) This section applies to trusts created either before or after the commencement of this Act.

Payment to
the public
trustee.
10 Geo. V,
No. 38 (Tas.).

47. (1) Where any money is held in trust for an infant, or for a person who is unable to give a good discharge or cannot be found, the trustee may pay the money to the public trustee, and on such payment shall furnish the public trustee with a copy of the trust instrument, or where there is no such instrument, then with a statutory declaration setting forth the trusts on which the money is held.

(2) The public trustee shall hold the money in trust for the infant or for such other person in accordance with the trusts affecting the same.

(3) Where the money is held in trust for an infant or an insane or incapable person, the public trustee may at his discretion, if the amount does not exceed one hundred pounds, and with the consent of the Judge or Probate Judge, if the amount exceeds one hundred pounds but does not exceed five hundred pounds, pay the whole or any part to such person as the public trustee thinks fit, to be applied for or towards the maintenance education or benefit of the beneficiary, or may himself so apply the whole or any part.

(4) This section applies to trusts created either before or after the commencement of this Act.

Receipts and compounding.

Receipts.
56 & 57 Vic.
c. 53, s. 20.
1898,
s. 64.

48. (1) The receipt in writing of trustees or of a sole trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to them or him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate

exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof. George V,
No. 14.

(2) This section applies to trusts created either before or after the commencement of this Act.

49. (1) The trustees or the majority acting together, or a sole trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers thereof, may, if and as they or he may think fit—

- (a) accept any property before the time at which it is made transferable or payable;
- (b) accept any composition or any security, real or personal, for any debt or for any property claimed;
- (c) allow any time for payment for any debt;
- (d) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the estate or trust;
- (e) for any of those purposes enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things, as to them or him seem expedient.

(2) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient, and may, if and as he may think fit, do any of the things mentioned in paragraphs (a) (b) (c) (d) and (e) of subsection one of this section.

(3) The trustee executor or administrator shall not be responsible for any loss occasioned by any act or thing so done by them or him in good faith.

(4) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(5) This section applies to trusts created either before or after the commencement of this Act.

Safe

George V,
No. 14.

Safe custody, audit, and valuation.

Deposit for
safe custody.
12 & 13
Geo. V, c. 16,
s. 120 (2).

50. (1) A trustee may deposit any documents held by him relating to the trust, or to the trust property, with any bank or with any incorporated company whose business it is to undertake the safe custody of documents.

(2) Any sum payable in respect of the deposit may be paid out of the income of the trust property.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies to trusts created either before or after the commencement of this Act.

Audit.
Ibid. s. 120
(7).

51. (1) A trustee may, in his absolute discretion, from time to time cause the accounts of the trust property to be examined or audited by a person who publicly carries on the business of an accountant, and shall for that purpose produce such vouchers and give such information to him as he shall require.

(2) The costs of the examination or audit, including the fee of the person making the examination or audit, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustee shall in his absolute discretion think fit.

(3) In default of any direction, in any special case, by the trustee to the contrary, costs attributable to capital shall be borne by capital and those attributable to income by income.

(4) Where the trustee is the public trustee or an incorporated company, nothing in this section shall, except in the case of a business forming part of the trust property, authorise any costs or fee to be paid out of or borne by the capital or income of the trust property.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6)

(6) This section applies to trusts created either before or after the commencement of this Act. George V,
No. 14.

52. (1) A trustee may, for the purpose of giving effect to the trust or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time, by duly qualified agents, ascertain and fix the value of any trust property in such manner as he thinks proper. Valuation.
12 & 13
Geo. V, c. 16,
s. 120 (6).

(2) Any valuation so made in good faith shall be binding upon all persons interested under the trust.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies to trusts created either before or after the commencement of this Act.

Agents, banks, and other persons.

53. (1) A trustee may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stockbroker or any other person, to transact any business or do any act required to be transacted or done in the execution of the trust or in the administration of the estate. Employment
of agents.
12 & 13
Geo. V, c. 16
s. 125 (1).

(2) The trustee shall be entitled to be allowed and paid all charges and expenses so incurred.

(3) The trustee shall not be responsible for the default of any such agent if employed in good faith.

(4) This section extends, in the case of a bank but not in any other case, to the receipt and payment of moneys.

(5) Nothing in this section shall authorise a trustee to employ an agent in any case where a person acting with prudence would not employ the agent to transact the business or do the act, if the business or act was required to be transacted or done in such person's own affairs.

(6) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any,

George V, any, creating the trust and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(7) This section applies to trusts created either before or after the commencement of this Act.

Banks.

(Q.) 6 Edw.
VII, No. 34,
s. 6; (W.A.)
64 Vict. No.
17, s. 54;
(N.Z.) 1902,
No. 200,
s. 101; Vict.
No. 3, 100.

54. (1) Where there are more than two trustees, and the trustees by writing under their hands authorise a bank, but not on any one occasion for a period exceeding three months—

(a) to pay bills of exchange drawn upon the banking account of the trustees by two or more trustees named in that behalf in the authority; or

(b) to recognise as a valid indorsement upon any bill of exchange payable to the order of the trustees the indorsement thereon by two or more trustees named in that behalf in the authority,

the bank acting in pursuance of the authority shall not be deemed privy to a breach of trust on the ground only of notice that the persons giving the authority were trustees, or that the instrument, if any, by which the trust was created did not contain any express power to give the authority.

(2) This section shall not affect any question of the liability of any trustee for breach of trust in giving the authority.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies to trusts created either before or after the commencement of this Act.

Foreign
property.

12 & 13
Geo. V, c. 16,
s. 125 (2).

55. (1) Where any property subject to a trust or forming part of the estate of a testator or intestate is in any place outside New South Wales, the trustee may appoint any person to act as his agent or attorney for any of the following purposes:—

(a) selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing, or cultivating, or otherwise administering the property;

(b)

(b) executing or exercising any discretion trust or power vested in the trustee in relation to the property. George V,
No. 14.

(2) The agent or attorney may be so appointed with such ancillary powers, and with and subject to such provisions and restrictions as the trustee may think fit, including a power to appoint substitutes.

(3) The trustee shall not, by reason only of having made the appointment, be responsible for any loss arising thereby.

(4) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(5) This section applies to trusts created either before or after the commencement of this Act.

56. (1) Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust or forms part of the estate of a testator or intestate, the trustee may, without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto, execute or exercise any trust or power vested in him in relation to such share, in conjunction with the persons entitled to or having power in that behalf over the other share or shares. Undivided
interests.
12 & 13
Geo. V, c. 16,
s. 125 (3).

(2) This section applies notwithstanding that the trustee may be entitled to or interested in any such other share, either in his own right or in a fiduciary capacity.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4) This section applies to trusts created either before or after the commencement of this Act.

Surviving

George V,
No. 14.

Two or more
trustees.
56 & 57 Vic.,
c. 53, s. 22.

15 Geo. V,
c. 5, 5th Sch.,
Pt. I (6).

Surviving trustee.

57. (1) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2) This section applies to powers and trusts created either before or after the commencement of this Act.

Protection of trustee.

Powers of
attorney.
56 & 57 Vic.,
c. 53, s. 23.
1898, No. 4,
s. 19.

58. (1) A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

(2) Nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made.

(3) The person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

(4) This section applies to trusts created either before or after the commencement of this Act.

Implied
indemnity.
56 & 57 Vic.,
c. 53, s. 24.
1898, No. 4,
s. 69.

59. (1) A trustee shall be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity.

(2) A trustee shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful neglect or default.

(3) Nothing in subsections one and two of this section shall prejudice the provisions of the instrument, if any, creating the trust.

(4)

(4) A trustee may reimburse himself, or pay or discharge out of the trust property all expenses incurred in or about the execution of his trusts or powers. George V,
No. 14.

(5) This section applies to trusts created either before or after the commencement of this Act.

60. (1) Where a trustee intends to convey or distribute any property to or among the persons entitled thereto, he may give the requisite notice of his intention so to convey or distribute the property. Distribution
after notice.
12 & 13
Geo. V, c. 16,
s. 118.

(2) The notice shall be by advertisements in the Gazette and in a daily Sydney newspaper, and also in the case of land not situate in the county of Cumberland in another newspaper, if any, published or circulating in the district in which the land is situate, and by such other like notices, if any, including notices, elsewhere than in New South Wales, as would in any special case have been requisite in order to comply with section ninety-two of the Wills, Probate and Administration Act, 1898, in the case of an intended distribution of assets by an executor or administrator.

(3) The notice shall require any person interested to send particulars of his claim in respect of the property or any part thereof to which the notice relates to the trustee within the time, not being less than two months, fixed in the notice or when more than one notice is given in the last of the notices.

(4) At the expiration of the time fixed by the notice the trustee may convey or distribute the property or any part thereof to or among the persons entitled thereto, having regard only to the claims, formal or otherwise, of which he then had notice.

(5) If the requisite notice has been given the trustee shall not, as respects the property conveyed or distributed, be liable to any person of whose claim the trustee has not had notice at the time of the conveyance or distribution.

(6) Nothing in this section shall prejudice the right of any person to follow the property, or any property representing the same, into the hands of any person who may have received the same.

61.

George V,
No. 14.
Distribution
where estate
comprises
leaseholds,
and in certain
other cases.
12 & 13
Geo. V, c. 16,
s. 117.

61. (1) Section ninety-four of the Wills, Probate and Administration Act, 1898, shall apply to an assignment or conveyance executed by a trustee and to the distribution of the trust property in like manner as that section applies to an assignment or conveyance by a legal representative and to the distribution of the estate of a testator or intestate.

(2) Nothing in this section shall prejudice the right of the lessor or grantor and the persons deriving title under him to follow the trust property into the hands of the persons amongst whom the same may have been distributed.

(3) This section applies only to assignments or conveyances executed after the commencement of this Act.

Notice.
15 Geo. V,
c. 5, 5th Sch.,
Pt. I.

62. A trustee acting for the purposes of more than one trust or estate shall not in the absence of fraud, be affected by notice of any instrument matter fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Advice.
1898, No. 4,
s. 20.

63. (1) A trustee may apply to the Judge or the Master in Equity for his opinion advice or direction on any question respecting the management or administration of the trust property, or respecting the interpretation of the trust instrument.

(2) If the trustee acts in accordance with the opinion advice or direction, he shall be deemed, so far as regards his own responsibility, to have discharged his duty as trustee in the subject matter of the application, provided that he has not been guilty of any fraud or wilful concealment or misrepresentation in obtaining the opinion advice or direction.

(3) Unless otherwise prescribed by rules of court, the application may be made by summons or appointment upon a written statement signed by the trustee, his counsel, or solicitor.

(4) Unless the Judge or the Master otherwise directs, it shall not be necessary to serve notice of the application on any person, or to adduce evidence by affidavit or otherwise in support of the application.

(5)

(5) The Judge may, if he thinks fit, adjourn the application into Court, and the Master may, if he thinks fit, refer the application to the Judge.

George V,
No. 14.

(6) The costs of the application shall be in the discretion of the Judge or Master, as the case may be, and the Judge or Master may, if he thinks fit, assess the costs.

(7) The jurisdiction of the Judge or Master under this section shall be subject to such limits, if any, as to amount or otherwise, as may be prescribed by rules of court, provided that the Master shall not exercise the jurisdiction under this section where the trust estate exceeds one thousand pounds in value.

A finding under the hand of the Master as to the value of the trust estate shall be conclusive evidence of the value upon any question as to the jurisdiction of the Master.

(8) Where the question is who are the beneficiaries or what are their rights as between themselves, the trustee before conveying or distributing any property in accordance with the opinion advice or direction shall, unless the Judge or Master otherwise directs, give notice to any person whose rights as beneficiary may be prejudiced by the conveyance or distribution.

(9) The notice shall state shortly the opinion advice or direction, and the intention of the trustee to convey or distribute in accordance therewith.

(10) Any person who claims that his rights as beneficiary will be prejudiced by the conveyance or distribution may within such time as may be prescribed by rules of court, or as may be fixed by the Judge or Master, apply to the Court for such order or directions as the circumstances may require, and during such time and while the application is pending, the trustee shall abstain from making the conveyance or distribution.

(11) Subject to the provisions of subsection ten of this section any person on whom notice of any application under this section is served or to whom notice is given in accordance with subsection eight of this section shall be bound by the opinion advice or direction of the Judge or Master, or by the order and directions of the Court, as the case may be, as if the opinion advice or direction, or the order and directions, had been given or made

George V, No. 14. made upon the hearing of an originating summons to which such person was a party, but subject to such right of appeal to the Full Court as may be prescribed by rules of court.

DIVISION 3.—Delegation.

Execution of trust.
1915, No. 31, ss. 3-4;
N.Z. Trustees Act, 1908, s. 103-4;
5 Geo. V, c. 13, s. 1 (1).

64. (1) Where a trustee is absent from New South Wales or is about to depart therefrom, he may by registered deed delegate the execution of the trust.

(2) A trustee may not so delegate, unless his co-trustees or co-trustee, and such other person, if any, as is empowered to appoint trustees, consent by the same or other registered deed to the delegation, and the delegation is to the public trustee or to a trustee company or to a person residing in New South Wales who is either a co-trustee or is capable of being appointed a trustee of the trust.

(3) The delegation may be made in respect of the whole or any part of the trust.

(4) The delegation shall not operate beyond two years from the date of the deed and shall be made on one occasion only, unless after the delegation the trustee has returned to New South Wales and is again absent or about to depart therefrom, provided that in the event of the delegate dying or the delegation being revoked, another delegation may be made for the balance of the period of two years.

(5) The delegation shall not be made, whether to a co-trustee or to any other person, unless there will be remaining in New South Wales to perform the trust, whether as trustee or as delegate, either one other trustee, or the public trustee, or a trustee company.

(6) Two or more trustees may delegate concurrently.

1915, No. 31, s. 5.
Ibid. s. 7;
5 Geo. V, c. 13, s. 1 (3).

(7) A trustee who delegates his trust shall remain answerable for all acts and omissions of the delegate within the scope of the delegation as if they were the acts and omissions of the trustee, and the delegate shall be subject to the jurisdiction and powers of any Court so far as respects the execution of the trust in the same manner as if he were the trustee.

(8)

(8) This section applies only if and as far as a ^{George V, No. 14.} contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained, provided that nothing in this subsection shall affect the jurisdiction or powers of any Court.

(9) This section applies to trusts created either before or after the commencement of this Act.

65. (1) Where a person whose consent is required ^{Consent to exercise of trust or power.} by any instrument to the exercise of a trust or power is absent from New South Wales or is about to depart therefrom, he may by registered deed delegate the right to consent to the public trustee, or a trustee company.

(2) Two or more persons may delegate concurrently.

(3) The person who delegates and the delegate shall be severally liable for any improper exercise of the right to consent.

(4) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the power or trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(5) This section applies to trusts or powers created either before or after the commencement of this Act.

66. (1) No person dealing in good faith with the ^{Persons dealing with delegate.} delegate under any deed of delegation authorised by this Part shall, by reason only that by the delegation or ^{1915, No. 31, s. 9.} any evidence or document in connection therewith it appears that the delegate is acting in the execution of ^{5 Geo. V, c. 13, s. 2} any trust, be affected for any purpose with notice of the ^{(3) (4).} trust.

(2) This section applies to dealings before as well as after the commencement of this Act.

67. Every delegation under this Part shall be deemed ^{Power of attorney.} to be a power of attorney within the meaning of Part XVI of the Conveyancing Act, 1919, and that ^{1915, No. 31, s. 8.} Part with the exception of sections one hundred and sixty-one and one hundred and sixty-two shall apply thereto.

68.

George V,
No. 14.
Registration.

68. (1) Any instrument by which a trust or the right to consent to the exercise of a trust or power is delegated may be registered in the office of the Registrar-General as prescribed by regulation under the Conveyancing Act, 1919.

(2) This section extends to a delegation, whether under this Part or under the provisions of the instrument creating the trust or power or otherwise, and whether the trust or power does or does not relate to land subject to the provisions of the Real Property Act, 1900.

(3) This section extends to a consent to a delegation.

(4) This section applies to instruments executed either before or after the commencement of this Act.

DIVISION 4.—*Statute of limitations.*

Statute of
limitations.
51 & 52 Vic.,
c. 59, s. 8.

69. (1) In any action suit or other proceeding against a trustee or any person claiming through him, the provisions of this section shall have effect :

Provided that this section shall not affect any action suit or other proceeding where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use.

(2) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action suit or other proceeding, if the trustee or person claiming through him had not been a trustee or person claiming through him.

W.A., 1900,
No. 17,
s. 13 (1) (b).

(3) If the action suit or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to the action, suit, or other proceeding in the like manner and to the like extent as if the claim had been against him (otherwise than as a trustee or a person claiming through a trustee) in an action of debt for money had and received.

(4)

(4) The bar by lapse of time shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation. George V,
No. 14.

(5) The bar by lapse of time shall not begin to run against any beneficiary unless and until the interest of the beneficiary becomes an interest in possession.

(6) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or decree obtained by another beneficiary than he could have obtained if he had brought the action suit or other proceeding and this section had been pleaded.

(7) This section shall not deprive any legal representative of any right or defence to which he is entitled under any existing statute of limitations.

(8) This section shall apply only to actions suits or other proceedings instituted after the commencement of this Act.

PART III.

POWERS OF THE COURT.

DIVISION 1.—*New trustees and vesting orders.*

Appointment of new trustees.

70. (1) The Court may make an order for the ^{New} appointment of a new trustee or new trustees either ^{trustees.} in substitution for or in addition to any existing trustee ^{56 & 57 Vic.,} or trustees, or although there is no existing trustee. ^{c. 53, s. 25.}

(2) The appointment may be made whenever it ^{1898, No. 4,} is expedient to appoint a new trustee or new trustees, ^{s. 25.} and it is inexpedient difficult or impracticable so to do ^{1902, No. 98,} without the assistance of the Court. ^{s. 8.}

(3) In particular and without prejudice to the ^{12 & 13} generality of any other provision of this section, the ^{Geo. V, c. 16,} Court may make an order for the appointment of a ^{s. 113 (8).} new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt, or being a corporation is in liquidation or is dissolved.

4)

George V,
No. 14.

(4) In the case of any trust for a charity the Court may make an order for the appointment of a new trustee on such evidence of the trust as the Court deems sufficient.

(5) This section shall be deemed to authorise the Court to make an order for the reappointment of the continuing trustees alone as new trustees.

(6) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

1902, No. 98,
s. 7.

(7) On any reference to the Master in Equity to appoint a new trustee the public trustee or a trustee company may be appointed by the Master in the same way as any other trustee may be appointed without the necessity for any reference back to the Court.

56 & 57 Vic.,
c. 53, s. 37.

(8) Every trustee appointed under this section shall, as well before as after the trust property becomes vested in him, have the same powers authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(9) Nothing in this section shall give power to appoint an executor or administrator.

Vesting orders.

Vesting orders,
56 & 57 Vic.,
c. 53, ss. 26, 35,
1898, No. 4,
ss. 29, 33,
1902, No. 98, s. 8.

71. (1) The Court may make an order in this Act called a vesting order, which shall have effect as provided in section seventy-eight of this Act.

(2) A vesting order may be made in any of the following cases, namely—

(a) where the Court appoints or has appointed a new trustee;

(b) where a new trustee has been appointed out of court under any statutory or express power;

(c) where a trustee retires or has retired;

(d) where a trustee is an infant;

(e) where a trustee is an insane or an incapable person or person of unsound mind;

(f) where a trustee is out of the jurisdiction of the Court;

(g)

12 & 13
Geo. V, c. 16,
s. 113 (1).

- (g) where a trustee cannot be found;
- (h) where a trustee being a corporation is dissolved;
- (i) where a trustee neglects or refuses to convey any property, or to receive the dividends or income of any property, or to sue for or recover any property according to the direction of the person absolutely entitled to the same for twenty-eight days next after a request in writing has been made to him by the person so entitled;
- (j) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any property;
- (k) where, as to the last trustee known to have been entitled to or possessed of any property, it is uncertain whether he is living or dead;
- (l) where there is no legal representative of a trustee who was entitled to or possessed of any property or where it is uncertain who is the legal representative of a trustee who was entitled to or possessed of any property;
- (m) where any person neglects or refuses to convey any property, or to receive the dividends or income of any property, or to sue for or recover any property in accordance with the terms of an order of the Court;
- (n) where the Court might have made a vesting order if this Act had not been passed;
- (o) where property is vested in a trustee, whether by way of mortgage or otherwise, either solely or jointly with any other person, and it appears to the Court to be expedient to make a vesting order.
- (3) The provisions of paragraphs (d), (e), (f), (g), (h), and (i) of subsection two of this section extend to a trustee entitled to or possessed of any property either solely or jointly with any other person.
- (4) Where the order is consequential on the appointment of a new trustee, the property shall be vested in the persons who, on the appointment are the trustees.
- (5)

George V,
No. 14.

12 & 13
Geo. V, c. 16,
s. 113 (2).

15 Geo. V,
c. 5, s. 5,
5th Sch.,
Pt. II.

**George V,
No. 14.** (5) Where the vesting order is consequential on the retirement of one or more of a number of trustees, the property may be vested in the continuing trustees alone.

1902, No. 98,
s. 8.

(6) Subject to the provisions of subsection four of this section, the vesting order may vest the property in any such person in any such manner and for any such estate or interest as the Court may direct, or may release or dispose of any contingent right to such person as the Court may direct.

56 & 57 Vic.,
c. 53, s. 40 ;
1898, No. 4,
s. 58.

(7) The fact that the order is founded or purports to be founded on an allegation of the existence of any of the matters mentioned or referred to in subsection two of this section, shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order.

Ibid.

(8) This section shall not prevent the Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained, or from making a further vesting order.

12 & 13
Geo. V, c. 16,
s. 113 (3).

(9) Where by reason of the dissolution of a corporation either before or after the commencement of this Act a legal estate in any property has determined, the Court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined, had it remained a subsisting estate.

Contingent
rights of
unborn
persons.

56 & 57 Vic.,
c. 53, s. 27.
1898, No. 4,
s. 30.

72. Where any property is subject to a contingent right in an unborn person or class of unborn persons, who, on coming into existence, would in respect thereof become entitled to or possessed of the property on any trust, the Court may make a vesting order releasing the property from the contingent right, or vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the property.

Infant
beneficiary.

12 & 13
Geo. V, c. 16,
s. 114.

73. Where an infant is beneficially entitled to any property the Court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order upon such terms as the Court may think fit appointing a person

person to convey the property, or in the case of stock, or a chose in action, vesting in any person the right to transfer or call for a transfer of the stock, or to receive the dividends or income thereof, or to sue for and recover the chose in action. George V,
No. 14.

74. Where any person entitled to or possessed of property by way of mortgage is an infant, or is an insane or an incapable person or person of unsound mind, the Court may make a vesting order vesting or releasing or disposing of the property, with the right to transfer or call for a transfer of property, or to receive the dividends or income thereof, or to sue for or recover property or any interest in respect thereof, in like manner as in the case of a trustee being an infant, or insane or incapable person, or person of unsound mind. Infant or
insane
mortgagee.
56 & 57 Vic.,
c. 53, s. 28.
1898, No. 4,
ss. 31, 39.

75. (1) Where a mortgagee of land has died, the Court may make a vesting order vesting the land in such person or persons in such manner and for such estate as the Court may direct: Deceased
mortgagee.
Ibid. s. 29.
Ibid. s. 32.

Provided that where the land is subject to the provisions of the Real Property Act, 1900, the order may discharge the mortgage.

(2) The order may only be made if the mortgagee did not enter into possession, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to any order for the reconveyance of the land.

(3) The order may be made in any of the following cases, namely—

- (a) where the legal representative of the mortgagee is out of the jurisdiction of the Court or cannot be found;
- (b) where the legal representative of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled;

(c)

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- (c) where it is uncertain as to the legal representative of the mortgagee whether he is living or dead;
- (d) where there is no legal representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his legal representative;
- (e) where the Court might have made a vesting order if this Act had not been passed.

56 & 57 Vic.,
c. 53, s. 40.
1898, No. 4,
s. 58.

(4) The fact that the order is founded or purports to be founded on an allegation of the existence of any of the matters mentioned or referred to in subsection three of this section shall be conclusive evidence of the matter in any Court upon any question as to the validity of the order.

(5) This section shall not prevent the Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained, or from making a further vesting order.

Sale or
mortgage of
land.
56 & 57 Vic.,
c. 53, s. 30.
57 & 58 Vic.,
c. 10, s. 1.
1898, No. 4,
ss. 33, 34.

76. (1) Where a decree is made by the Court directing the sale or mortgage of any land, the Court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate as the Court thinks fit in the purchaser or mortgagee or in any other person.

(2) For the purposes of this section every person who is entitled to or possessed of the land, or entitled to a contingent right therein, and is a party to the suit or other proceeding in which the decree is made or is otherwise bound by the decree, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act.

Specific
performance,
and other
matters.
56 & 57 Vic.,
c. 53, s. 31.
1900, No. 24,
s. 6.
1898, No. 4,
s. 35.

77. (1) The Court may make a vesting order where a decree is made by the Court for the specific performance of a contract concerning any land, or for the partition or sale in lieu of partition of any land, or for the exchange of any land, or for the conveyance of any land, either in cases arising out of the doctrine of election or otherwise.

(2)

(2) For the purposes of this section the Court George V,
No. 14. may declare—

- (a) that any of the parties to the suit or other proceeding are trustees of the land or any part thereof within the meaning of this Act;
- (b) that the interests of unborn persons who might claim under any party to the suit or other proceeding, or under the will or voluntary settlement of any person deceased, who was during his lifetime a party to the contract or transactions concerning which the decree is made, are the interests of persons who on coming into existence would be trustees within the meaning of this Act.

(3) The vesting order may be made with respect to the rights of those persons born and unborn as if they had been trustees.

78. (1) In the case of a vesting order consequential Effect of vesting order,
56 & 57 Vic.,
c. 53, s. 32. on the appointment of a new trustee, or the retirement of a trustee, the vesting order shall have the same effect as if the persons who before the appointment or retirement 1898, No. 4,
s. 36. were the trustees, if any, had duly executed all proper conveyances of the property for such estate or interest as the Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity, and had duly executed all proper conveyances of the property for such estate or interest as the Court directs.

(2) In every other case the vesting order shall have the same effect as if the trustee or other person or description or class of persons to whose rights, or supposed rights, the provisions of this Part respectively relate, had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

(3) In the case of land subject to the provisions of the Real Property Act, 1900, the land shall not vest until the appropriate entries are made in accordance with the provisions of that Act, and in the case of any other

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George V, other land, the land shall not vest before the order is
No. 14. registered in the office of the Registrar-General as prescribed by regulation under the Conveyancing Act, 1919.

(4) In the case of property subject to the provisions of the Closer Settlement Acts or the Mining Act, 1906, or the Crown Lands Consolidation Act, 1913, or any other Act relating to Crown lands, the proper officer is hereby authorised, upon the vesting order being registered as provided in subsection three of this section, to make all such entries as may be necessary to give effect thereto.

(5) In the following cases the vesting order shall vest in the person named in the order the right to transfer or call for a transfer of the property or security, that is to say, in the case of—

- (a) any property that does not come within subsections three or four of this section, but a transfer of which is required to be registered by or under any Act, whether of this State or otherwise;
- (b) any security that is only transferable in books kept by a corporation company or other body, or in manner directed by or under any Act, whether of this State or otherwise.

(6) In the case of any security or chose in action the vesting order shall vest in the person named in the order the right to receive the dividends or income thereof, and to sue for or recover the chose in action.

56 & 57 Vic., (7) The person in whom the right to transfer
c. 53, s. 35 (3). or call for the transfer of any property or security is so vested may transfer the property or security to himself or any other person according to the order, and all corporations companies associations and persons shall obey the order.

Ibid. s. 35 (4). (8) After notice in writing of the vesting order it shall not be lawful for any company association or person to transfer any property or security to which the order relates, or to pay any dividends thereon except in accordance with the order.

79. In all cases where a vesting order can be made the Court may, if it is more convenient, appoint a person to convey the property or release any contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

George V,
No. 14.

Appointment of
person to
convey.
56 & 57 Vic.,
c. 53, s. 33, 1893,
No. 4, s. 37.

80. The powers conferred by this Act as to vesting orders may be exercised for vesting any property in any trustee of a charity or society over which the Court would have jurisdiction upon suit or other proceeding duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

Trustees of
charities.

Ibid. s. 39,
1893, No. 4,
s. 45.

DIVISION 2.—*Dealings and improvements.*

81. (1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or disposition, or any purchase, investment, acquisition, expenditure, or transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the instrument, if any, creating the trust, or by law, the Court—

Advan-
tageous
dealings,
12 & 13
(Geo. V, c. 16,
s. 123.

- (a) may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, including adjustment of the respective rights of the beneficiaries, as the Court may think fit; and
- (b) may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The provisions of subsection one of this section shall be deemed to empower the Court, where it is satisfied that an alteration whether by extension or otherwise of the trusts or powers conferred on the trustees by the trust instrument, if any, creating the trust

64 Vic. No.
17, s. 45 (3)
(W.A.).

George V, No. 14. trust, or by law is expedient, to authorise the trustees to do or abstain from doing any act or thing which if done or omitted by them without the authorisation of the Court or the consent of the beneficiaries would be a breach of trust, and in particular the Court may authorise the trustees—

- (a) to sell trust property, notwithstanding that the terms or consideration for the sale may not be within any statutory powers of the trustees, or within the terms of the instrument, if any, creating the trust, or may be forbidden by that instrument;
- (b) to postpone the sale of trust property;
- (c) to carry on any business forming part of the trust property during any period for which a sale may be postponed;
- (d) to employ capital money subject to the trust in any business which the trustees are authorised by the instrument, if any, creating the trust or by law to carry on.

(3) The Court may from time to time rescind or vary any order made under this section, or may make any new or further order.

(4) The powers of the Court under this section shall be in addition to the powers of the Court under its general administrative jurisdiction and under this or any other Act.

(5) This section applies to trusts created either before or after the commencement of this Act.

Improve-
ments and
repairs.

1902, No. 98,
s. 10.

82. (1) Where any leasehold or freehold land is vested in a trustee for any infant, or in trust for any persons in succession, the Court may authorise the trustee to pay or apply capital money subject to the trust for any one or more of the following purposes, as to the Court seems fit, that is to say—

- (a) to effect repairs to any existing buildings, dams, fences or other erections upon the land;
- (b) to effect improvements of or upon the land, or to reconstruct enlarge or improve any existing buildings, dams, fences or other erections thereon;

(c)

- (c) to erect any new buildings, dams, fences or other erections upon the land;
- (d) to erect or join in erecting any give and take fence, that is to say, a fence part of which is on the land and part on adjoining land;
- (e) to restock the land with sheep, cattle, or horses;
- (f) to replace machinery or implements required for the land.

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No. 14.

(2) The trustee may be so authorised where the Court, having due regard to the interest of all persons beneficially interested in the land, thinks that the proposed expenditure is expedient, although it may not be necessary for the purpose of the salvage of the property.

(3) The amount of capital money that may be so expended shall be stated in the order authorising the proposed expenditure.

(4) The Court may authorise the trustee, as to the Court seems fit—

- (a) to raise the amount by mortgage of the land, or by sale of a part thereof;
- (b) to raise the amount by mortgage or sale of any other real or personal property held upon the same trusts;
- (c) to pay the amount out of any moneys under the control of the trustee and held by him upon the same trusts;
- (d) to provide the amount partly in one and partly in another of those modes;
- (e) to provide a sinking fund out of income.

(5) Where the amount is authorised to be raised by mortgage the Court may give directions to the trustee how the principal and interest are to be paid.

(6) The Court may require such provision for a sinking fund as the Court thinks proper.

(7) The Court shall give such directions as appear necessary and proper, so as to throw upon the respective interests of the persons beneficially interested their proper proportion of the moneys to be expended.

(8)

**George V;
No. 14.** (8) No purchaser or mortgagee paying or advancing money upon any sale or mortgage authorised by the Court under this section shall be required to see to the application of the purchase money or mortgage money, and the protection given by this subsection shall extend to the Registrar-General Crown Solicitor or other person registering or certifying title.

(9) This section applies to trusts created either before or after the commencement of this Act.

**Purchase of
home for
infant.** **83.** (1) Where any property is held in trust for an infant, the Judge or Probate Judge may authorise the trustee to pay or apply capital money subject to the trust for the purpose of providing a home for the infant either solely or together with any other person.

(2) The authority shall be given on such terms and subject to such provisions and conditions as the Judge or Probate Judge may think fit.

(3) The Judge or Probate Judge may confer upon the trustee such powers as appear necessary or proper for the purpose, including power to purchase land or chattels, whether on terms of deferred payment or otherwise, to erect reconstruct enlarge improve and repair buildings, and to join with any other person in doing anything under this section.

(4) The Judge or Probate Judge may authorise or direct the lease mortgage or sale of any land purchased under this section.

(5) The Judge or Probate Judge may rescind or vary any order made under this section, or may make any new or further order.

(6) Property shall be deemed to be held in trust for an infant within the meaning of this section, if the trustee might apply the income thereof for or towards the maintenance education or benefit of the infant.

(7) This section applies whether the trust is for the infant solely or together with any other person, and whether the interest of the infant is or is not in possession.

(8) This section applies to trusts created either before or after the commencement of this Act.

84.

84. (1) Where any property is held in trust for an infant, the Judge or Probate Judge may authorise the trustee to sell the whole or any part of the property.

George V,
No. 14.
Sale of
infant's
property.

(2) The authority shall be given on such terms and subject to such provisions and conditions as the Judge or Probate Judge may think fit.

(3) The Judge or Probate Judge may confer upon the trustee such powers as appear necessary or proper for the purpose, including power to concur with any other person.

(4) This section applies whether the trust is for the infant solely or together with any other person, and whether the interest of the infant is or is not in possession.

(5) This section applies to trusts created either before or after the commencement of this Act.

DIVISION 3.—*Relief and indemnity.*

85. (1) Where a trustee is or may be personally liable for any breach of trust, the Court may relieve the trustee either wholly or partly from personal liability for the breach.

Excusable
breaches of
trust.
59 & 60 Vic.,
c. 35, s. 3.
1902, No. 98,
s. 9.

(2) The relief may not be given unless it appears to the Court that the trustee has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the direction of the Court in the matter in which he committed the breach.

(3) In the case of a legal representative the powers of the Court may be exercised by the Supreme Court in its probate as well as in its equity jurisdiction.

(4) This section applies whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act.

86. (1) Where a trustee commits a breach of trust at the instigation or request or with the written consent of a beneficiary, the Court may, if it thinks fit, make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Indemnity
for breach
of trust.
56 & 57 Vic.,
c. 53, s. 45.

(2)

George V,
No. 14.

(2) The provisions of subsection one of this section shall be deemed to empower the Court to impound all or any part of the interest of any beneficiary who receives any pecuniary benefit from the breach of trust.

(3) This section applies notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation.

(4) This section applies to breaches of trust committed as well before as after the commencement of this Act, but shall not prejudice any question in any suit or other proceeding instituted before and pending at the commencement of this Act.

DIVISION 4.—*Miscellaneous powers.*

Division of
chattels.
12 & 13
Geo. V, c. 16,
s. 123 (5).

87. (1) Where any chattels are vested in a trustee for persons in undivided shares, any person interested in a moiety or upwards may apply to the Court for an order for division of the chattels or any of them, according to a valuation or otherwise.

(2) The Court may make such order and give any consequential directions as it thinks fit.

Decree in
absence of
a trustee.
56 & 57 Vic.,
c. 53, s. 43.
1898, No. 4,
s. 57.

88. Where in any suit the Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant thereto to serve him with a process of the Court and that he cannot be found, the Court may hear and determine the suit and make a decree therein against that person in his character of a trustee as if he had been duly served or had entered an appearance in the suit, and had also appeared by his counsel or solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the suit in any other character.

Proceedings
in lunacy.
1898, No. 4,
s. 55.

89. Where an application is made under this Part concerning a person of unsound mind, the Court may direct an application to be made to the Supreme Court, in its lunacy jurisdiction, for the purpose of having such person declared an insane or an incapable person, and may postpone making any order until that application has been heard.

90.

90. Where any application is made under this Part, the Court may postpone making any order upon the application until the right of the applicant has been declared in a suit duly instituted for that purpose.

**George V,
No. 14.
Suit.
1898, No. 4,
s. 56.**

DIVISION 5.—Applications and orders.

91. (1) Every application to the Court under this Act shall be by summons at chambers, except where it is otherwise provided in this Act or by rule of court.

**Summons.
1919, No. 6,
s. 171.**

(2) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(3) If on any application any person who ought to be served with notice cannot be found within New South Wales, or if it is uncertain whether any such person be living or dead, or if notice cannot be given to any such person without expense disproportionate to the value of his interest, the Court may dispense with notice to any such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

**1898, No. 17,
s. 53.**

(4) The Court may, if it thinks fit, adjourn any application into Court.

(5) Where in any suit or proceeding the facts proved would entitle the Court to make any order on an application under this Act, the Court may make the order without requiring any separate proceeding to be initiated, and any order so made shall be deemed to be made on an application under this Act.

92. (1) An order under this Act for the appointment of a new trustee or concerning any property subject to a trust may be made on the application of any person interested in the property, whether under disability or not, or of any person duly appointed trustee thereof.

**Persons
entitled to
apply.
56 & 57 Vic.,
c. 53, s. 36.
1898, No. 4,
s. 46.**

(2) An order under this Act concerning any property subject to a mortgage may be made on the application of any person interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

93.

George V,
No. 14.

Costs,
1919, No. 6,
s. 171.

56 & 57 Vic.,
c. 53, s. 33.
1898, No. 4,
s. 54.

93. (1) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs charges and expenses of all or any of the parties to any application under this Act.

(2) The Court may order the costs charges and expenses of and incident to any application or any order under this Act to be paid or to be raised by sale or mortgage out of the property in respect whereof the same is made or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

(3) In any suit or proceeding with respect to the management or administration of any property subject to a trust or forming part of the estate of a testator or intestate, or with respect to the interpretation of the trust instrument, the Court may, if it thinks fit, order any costs to be paid out of such part of the property as in the opinion of the Court is the real subject matter of the suit or proceeding.

(4) This section shall extend to any direction opinion or advice, any payment into or out of court, and any conveyance or transfer in pursuance of an order.

Court.

94. In this Division "the Court" includes the Judge or Probate Judge.

PART IV.

PAYMENT INTO COURT.

Trustees.
1898, No. 4,
ss. 59, 60.

95. (1) Where trustees, or the majority of trustees, have in their hands or under their control money or securities belonging to a trust, they may pay the same into court.

(2) Where any money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence
of

of the other or others cannot be obtained, the Court may order the payment into court to be made by the majority without the concurrence of the other or others. George V,
No. 14.

(3) Where any such money or securities are deposited with any banker broker or other depository, the Court may order transfer payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(4) Every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money or securities so transferred paid or delivered.

96. Where an infant or person of unsound mind is entitled to any money payable in discharge of land stock or chose in action conveyed under this Act, the person by whom the money is payable may pay the money into court. Person liable
to infant or
person of un-
sound mind.
1898, No. 4,
s. 62.

97. (1) Where any money is payable by any life assurance company under a life policy in respect of which, in the opinion of the board of directors, no sufficient discharge can otherwise be obtained, the company may pay the money into court. Life assurance
companies.
59 & 60 Vic.,
c. 8.

(2) Where in the opinion of the Court the payment in was made without reasonable grounds, the Court may order all costs occasioned thereby to be paid by the company.

(3) In this section "life assurance company" means any corporation, company, or society carrying on the business of life assurance, not being a society registered under the Acts relating to friendly societies; and "life policy" includes any policy not foreign to the business of life assurance.

98. (1) The payment of money or securities into court shall be subject to rules of court. Money or
securities.
56 & 57 Vic.,
c. 53, s. 42.

(2) The receipt or certificate of the Master in Equity or other proper officer shall be a sufficient discharge to any trustee person or company for money or securities paid into court. 1898, No. 4,
ss. 59, 61.

(3) Money or securities paid into court shall, subject to rules of court, be dealt with according to the orders of the Court.

(4)

George V,
No. 14.

(4) The Court may make such order as it thinks fit as to the investment payment or distribution of money or securities paid into court, or the dividends or income thereof.

Trustee.

99. In this Part “trustee” includes every implied or constructive trustee without any exception.

PART V.

MISCELLANEOUS PROVISIONS.

Escheat.
1898, No. 4,
ss. 65, 66.
56 & 57 Vic.,
c. 53, s. 48.

100. (1) Property vested in any person upon any trust or by way of mortgage shall not escheat or be forfeited to His Majesty by reason of the attainder or conviction for any offence of the trustee or mortgagee.

(2) Property so vested shall remain in the trustee or mortgagee or survive to his co-trustee, or vest in his legal representative as if the attainder or conviction had not taken place.

(3) This section shall not prevent the escheat or forfeiture of any property vested in any trustee or mortgagee so far as relates to any beneficial interest therein of the trustee or mortgagee, but the property, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this Act had not been passed.

Property
vested in the
Chief Justice.
1898, No. 4,
s. 67.
56 & 57 Vic.,
c. 53, s. 49.

101. Where any new trustee is appointed under or in pursuance of the powers conferred by any instrument creating a trust, or by this or any other Act, all the property which for the time being is vested in the Chief Justice or the senior Puisne Judge for the time being by virtue of the Wills, Probate and Administration Act, 1898, and is subject to the trust in respect of which the new trustee is appointed, shall, on registration of the order or deed appointing the new trustee, and without other assurance in the law, become and be legally and effectually vested in the new trustee either solely or jointly with any surviving or continuing trustee, as the case may require.

102.

102. Where any guardian, committee, receiver, or other trustee appointed by the Supreme Court in any jurisdiction has been or is (either by order in the particular cause or matter or by any general rule) directed to account from time to time to that Court, or to file any report or account in the office of the Master in Equity, that Court, on the application of any party interested, or of such Master on behalf of the parties or any of them, or without any such application may enforce compliance with every such rule or order by a rule or summons to show cause, and by rule or order absolute thereon, as in an action or proceeding at law, and may punish non-compliance with any such rule or order absolute by attachment for contempt as in any case of contempt at law, with costs in each case, payable by and to whom that Court thinks fit to direct.

**George V,
No. 14.**
Compulsion
to account,
1898, No. 4,
s. 68.

103. (1) This Act and every order purporting to be made under this Act shall be a complete indemnity to all companies associations and persons for any acts done pursuant thereto.

Indemnity.
56 & 57 Vic.,
c. 53, s. 49.
1898, No. 4,
s. 43.

(2) It shall not be necessary for any company association or person to inquire concerning the propriety of the order or whether the Court had jurisdiction to make the same.

104. The judges of the Supreme Court, or any three of them, may make such general rules and orders as from time to time seem necessary for better carrying the provisions and objects of this Act into effect, and for regulating the practice and procedure under this Act.

Power to
make rules.
1898, No. 4,
s. 70.

Amendment of other Acts.

105. Section ninety-four of the Wills, Probate and Administration Act, 1898, is hereby amended as follows:—

Amendment
of No. 13 of
1898, s. 94

- (a) In subsection one of that section, after the words "to a purchaser" the words "or to a legatee devisee or other person entitled to call for a conveyance thereof" are inserted.

Trustee Act,
1925, s. 60.

(b)

142 **Trustee Act.**

George V,
No. 14.

(b) After subsection two of that section the following new subsection is inserted:—

(3) In this section “assignment” and “conveyance” include an acknowledgment within the meaning of section eighty-three of this Act, and “lease” includes an underlease.

Amendment
of 1921, No 3,
s. 14.

106. Section fourteen of the Real Property (Amendment) Act, 1921, is amended by the addition of the following new subsection:—

Trustee
Act, 1925,
s. 12 (4).

(3) From the commencement of the Trustee Act, 1925, this section shall not apply to a vesting on the appointment or retirement of a trustee under the provisions of that Act, or to a declaration under the provisions of that Act by an executor that he holds as trustee or as beneficiary, as the case may be.

SCHEDULE.

Reference to Act.	Subject or short title.	Extent of repeal.
1898, No. 4 ...	Trustee Act, 1898	Sections 2 to 17 inclusive, and 19 to 70 inclusive.
1898, No. 4 ...	Trustee Act, 1898	Section 18, except as otherwise provided by section 43 (11) of this Act.
1898, No. 13 ...	Wills, Probate and Administration Act, 1898.	Section 96.
1900, No. 24 ..	Partition Act, 1900	Section 6.
1902, No. 98 ...	Trustee Act Amendment Act, 1902.	The whole Act.
1915, No. 31 ...	Trustees Delegation of Powers Act, 1915. .	The whole Act, except sections 6 and 9.

ADMINISTRATION