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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1921.

A BILL

To amend and consolidate the law relating to trustees and trust property.

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, 1921." Short title and commencement.

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

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

Division into parts.

PART I.—INTERPRETATION—s. 4.

PART II.—POWERS, DUTIES, AND LIABILITIES OF TRUSTEES—

DIVISION 1.—*Investment*—ss. 6-9.

DIVISION 2.—*Appointment and retirement*—ss. 10-13.

DIVISION 3.—*Sale and purchase*—ss. 14-19.

DIVISION 4.—*Statute of limitations*—s. 20.

DIVISION 5.—*Various powers and liabilities*—ss. 22-32.

DIVISION 6.—*Delegation of trusts and powers*—ss. 33-38.

PART III.—POWERS OF THE COURT—

DIVISION 1.—*Appointment of new trustees and vesting orders*—ss. 39-52.

DIVISION 2.—*Relief from breaches of trust*—s. 53.

DIVISION 3.—*Miscellaneous powers of the Court*—ss. 54-57.

PART IV.—PAYMENT INTO COURT BY TRUSTEES—ss. 58-60.

PART V.—EXECUTORS AND ADMINISTRATORS—ss. 61-62.

PART VI.—MISCELLANEOUS PROVISIONS—ss. 63-69.

3. (1) The Acts mentioned in the Schedule to this Act, to the extent to which the same are there expressed to be repealed, are hereby repealed. Repeal of Acts.

(2) All rules of court made under the authority of any Act hereby repealed and being in force at the commencement of this Act shall be deemed to have been made under the authority of this Act.

4. Except as hereinafter provided, this Act so far as it is inconsistent with the Public Trustee Act, 1913, shall not apply to the public trustee. Application to Public Trustee.

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. See 56 & 57 Vic., c. 53, s. 50. 1898, No. 4, s. 3.
- “Convey” and “conveyance,” applied to any person, include the execution or doing by that person of every necessary or suitable assurance or 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.
- “Devisee” includes legatee and the executor or administrator of a devisee or legatee and generally any person claiming an interest in the land of a deceased person, not as next of kin of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent.
- “Executor” means the executor to whom probate has been granted and includes an executor by right of representation.
- “Insane person” means a person who has been declared to be an insane person by the Supreme Court in its lunacy jurisdiction, or who has been found to be a lunatic upon a commission of inquiry in the nature of a writ de lunatico inquirendo.
- “Instrument” includes will and Act of Parliament.
- “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. “Legal

- “Legal representative” means executor or administrator.
- “Mortgage” and “mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee.
- “Order” includes decree.
- “Pay” and “payment” as applied in relation to stocks and securities, and in connection with the expression “into court” include the deposit or transfer of the same in or into court.
- “Person of unsound mind” means any person not an infant who is incapable, from infirmity of mind, to manage his own affairs, but is not an insane person as above defined.
- “Possessed” applies 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 land.
- “Prescribed” means prescribed by or under this Act.
- “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 other right or interest.
- “Rights” include estates and interests.
- “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”

“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; and “trustee” has a meaning corresponding with that of trust.

“Trustee company” means a company authorised by Act of Parliament of this State to act as trustee in New South Wales.

“Will” includes codicil.

PART II.

POWERS AND DUTIES OF TRUSTEES.

DIVISION 1.—*Investments.*

- 6.** (1) A trustee, unless expressly forbidden by the instrument (if any) creating the trust, may—
- (a) invest any trust funds in his hands, whether at the time in a state of investment or not, in any of the investments authorised by this Act;
- (b) from time to time vary any such investment;
- (c) invest in any of the authorised investments, notwithstanding that the same may be redeemable and that the price exceeds the redemption value, and retain the security until redemption;
- (d) in the case of real securities, invest for a fixed period or otherwise.
- (2) The investments authorised by this Act are—
- (a) any public funds or Government stock or Government securities of the Commonwealth of Australia, or any State thereof, or New Zealand or Fiji;
- (b) real securities in New South Wales;
- (c)

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

- (c) any debentures, mortgage deeds, or bonds or other securities issued by the municipal council of Sydney or any municipal or shire council in New South Wales;
- (f) deposit for a fixed period or otherwise in the Commonwealth Bank of Australia or 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.

(3) Where a trustee is authorised by any instrument to invest in real or Government securities in Great Britain or Ireland, the authority shall be deemed to extend to investment in real or Government securities in New South Wales.

(4) The powers conferred by this section shall— *Ibid.* s. 3.

- (a) be exercised according to the discretion of the trustee, but subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds;
- (b) be in addition to the powers conferred by the instrument, if any, creating the trust.

(5) This section applies as well to trusts created before as to trusts created after the commencement of this Act. *Ibid.* s. 4.

7. (1) A trustee shall not be chargeable with breach of trust only upon the ground 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. Accepting a short title. 56 & 57 Vic., c. 53, s. 8 (3). 1902, No. 98, s. 2.

(2) This section applies to—

- (a) transfers of existing securities as well as to new securities; and
- (b) to investments made as well before as after the commencement of this Act.

8. (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 it appears to the Court that the loan was made in accordance with this section.

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

(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 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) In the case of a report the loan must have been made under the advice of the valuer expressed in the report.

(5) This section applies to—

- (a) transfers of existing securities as well as to new securities; and
- (b) investments made as well before as after the commencement of this Act.

9. (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.
Ibid. s. 9 (1).
1902, No. 98, s. 3.

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

Ibid. s. 5, 8(4);
9 (2).
Ibid. s. 4.

10. 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 of trust or by the general law.

Liability of trustee in case of change of character of investment.
57 Vic., c. 10, s. 4.

DIVISION 2.—Appointment and retirement of trustees.

- 11.** (1) A new trustee, or new trustees, may by writing be appointed under this Division in place of a trustee, either original or substituted, and whether appointed by the Court or otherwise, where the trustee—
- (a) is dead, or
- (b) remains out of New South Wales for more than two years, or
- (c) desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or
- (d) refuses or is unfit to act therein, or is incapable of acting therein.
- (2) The appointment may be made—
- (a) by the person or persons, nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or
- (b) or 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 representatives of the last surviving or continuing trustee.
- (3) The appointment may be made for the whole or any part of the trust property.
- (4) The number of trustees may be increased.
- (5) A separate set of trustees may be appointed for any distinct part of the trust property, that is to say, for any part 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.
- (6) Any existing trustee may be appointed or remain one of the separate set of trustees.
- (7) If only one trustee was originally appointed then one separate trustee may be so appointed for the distinct part.
- (8)

Appoint-ment.
See 56 & 57 Vic., c. 53, s. 10.

See 1898, No. 4, s. 6.
Vict. Act 1915, No. 2,741, s. 14.
1902, No. 98, s. 6.

56 & 57 Vic., c. 53, s. 10.

(8) It shall not be obligatory—

- (a) to appoint more than one new trustee where only one trustee was originally appointed; or
- (b) to fill up the original number of trustees where more than two trustees were originally appointed.

(9) Except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees, or the public trustee, or a trustee company, to perform the trust.

(10) 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.

(11) Every new trustee appointed under this Division, 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.

(12) The provisions of this section—

- (a) relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator;
- (b) relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(13) 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 any provisions therein contained.

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

12. (1) A trustee may by deed retire from the trust under this Division without any new trustee being appointed in his place.

Retirement.
See 56 & 57
Vic., c. 53,
s. 11.

(2) 1902, No. 98,
ss. 5, 6.

(2) A trustee may not so retire, unless—

- (a) his co-trustees and such other person, if any, as is empowered to appoint trustees, consent by deed to the retirement; and
- (b) there be left after the retirement at least two continuing trustees, or the Public Trustee, or a trustee company, to perform the trust.

(3) The retiring trustee shall declare by the same or other deed that he desires to retire from the trust.

(4) The retirement shall—

- (a) take effect on the execution of the deed or deeds of consent and retirement; and
- (b) except as otherwise provided in this section, discharge the trustee from the trust.

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

(6) If in order to vest any part of the trust property in the continuing trustees alone, it is necessary that any conveyance should be executed and registered, the retiring trustee shall not be discharged in respect of that part, until the conveyance is executed and registered.

(7) This section extends to the retirement of two or more trustees concurrently.

(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 any provisions therein contained.

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

13. (1) Where a new trustee is appointed under ^{Vesting.} this Division, the whole or part, as the case may be, of ^{cf. 56 & 57} the trust property for which the new trustee is appointed ^{Vic., c. 53,} shall by this Act, on the appointment and without any ^{s. 12.} conveyance, except as otherwise provided in this section ^{1902, No. 98,} vest in the persons who become and are the trustees for ^{s. 5.} performing the trust, as joint tenants and for the purposes of the trust.

(2)

(2) Where a trustee retires under this Division, all the trust property which is jointly vested in the continuing trustees and the retiring trustee shall by this Act, on the retirement and 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.

(3) In the case of land not subject to the provisions of the Real Property Act, 1900, or the Mining Act, 1906, or the Crown Lands Consolidation Act, 1913, or any other Act relating to Crown lands, the land shall not vest until the appointment, or the deed or deeds of retirement, as the case may be, are registered in the office of the Registrar-General as prescribed :

Provided that if the land has been conveyed by way of mortgage for securing money subject to the trust, the land shall not vest until the necessary and appropriate transfer of mortgage is executed and registered in the office of the Registrar-General as prescribed.

(4) In the case of property subject to the provisions of any of the Acts mentioned in subsection three of this section, and in the case of any property a transfer of which is required by any Act to be registered, the property shall not vest until the necessary and appropriate transfers are executed and registered so that the property is duly transferred.

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

(6) If any security or chose in action does not vest under this section until transfer or registration, the right to call for a transfer of the security, and to receive the income or dividends thereof, and to sue for or recover the chose in action, shall nevertheless vest under and in accordance with this section—

(a) where a new trustee is appointed, in the persons who become and are the trustees for performing the trust ; and

(b)

(b) where a trustee retires, in the continuing trustees.

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

15. (1) Any instrument by which a new trustee is appointed, or by which a trustee retires, may be registered in the office of the Registrar-General as prescribed.

Registration of appointment or retirement.
See 56 & 57 Vic., c. 53, s. 12.

(2) This section extends to a deed of consent to a retirement as well as to a deed of retirement

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

DIVISION 3.—*Sale and purchase.*

16. (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may—

- (a) sell all or any part of the 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 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 ;
- (e) concur with any other person in doing anything under any of the preceding paragraphs of this subsection ;
- (f) raise any money required for any of the purposes mentioned in this subsection by mortgage of the trust property to be sold or of any other part held by the trustee on the same trusts.

Mode and terms of sale.
See 56 & 57 Vic., c. 53, s. 13.
1898, No. 9, ss. 9, 10.

(2) The sale may be—

- (a) either subject to prior charges or not ;

(b)

Trustee.

- (b) either together or in lots, in subdivision or otherwise ;
- (c) by public auction or by private contract ;
- (d) subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit ;
- (e) on payment of the purchase money by instalments or otherwise.

(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 concurs with any other person in selling—

- (a) the purchase money shall be apportioned in or before the contract of sale ;
- (b) a separate receipt shall be given by the trustee for the apportioned share.

(5) If the purchase money is to be paid by instalments—

- (a) the instalments shall be payable at intervals of not more than six months beginning from the date of the contract of sale, and shall bear interest at a rate of not less than five pounds per centum ;
- (b) the whole of the purchase money and interest shall be repayable within a period not exceeding five years from the date of the contract of sale ;
- (c) the land sold shall not be conveyed until at least one equal third part of the purchase money together with interest thereon shall have been paid ; and
- (d) in the event of a conveyance being made before the whole of the purchase money and interest has been paid, a mortgage of the land to secure the unpaid balance and interest shall be taken by the trustee.

(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)

(6) This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Act.

15. (1) Where a trustee sells subject to any condition which may have been unnecessarily depreciatory—

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 only to sales made after the commencement of this Act.

16. (1) Where a trustee or other person is for the time being authorised to dispose of land by way of sale, exchange or partition, he may so dispose—

Severance of lands and minerals.

See 45 & 46 Vic., c. 38, s. 17 ; 56 & 57 Vic., c. 53, s. 44 ; 57 Vic., c. 10, s. 3.

- (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) In any such case 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, 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) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

17. (1) Where any property vested in trustees by way of security becomes, by virtue of the statutes of limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale, with power to postpone the sale for such a period as they may think proper.

Provisions respecting mortgaged property where right of redemption barred.

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

(2)

(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—

- (a) any rule of law relating to the apportionment of capital and income between tenant for life and remainderman ;
- (b) 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.

(4) This section applies to property the right of redemption whereof is discharged—

- (a) under the Real Property Act, 1900, or otherwise ;
- (b) before as well as after the commencement of this Act.

18. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section fifty-three subsection two of the Conveyancing Act, 1919. Power to sell under Conveyancing Act, 1919. 56 & 57 Vic., c. 53.

DIVISION 4.—*Statute of limitations.*

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

(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.

(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 such action, suit, or other proceeding in the

the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(4) 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 such action, suit, or other proceeding and this section had been pleaded.

(5) This section shall not affect any action, suit, or other proceeding where the claim—

(a) is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy; or

(b) 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.

(6) This section shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute of limitations.

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

20. (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding the full insurable value of such building or property, and pay the premiums for such insurance out of the income thereof 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 such income.

Power to insure building.
See 56 & 57 Vic., c. 53, s. 18.
Vict. Act No. 2,741, s. 22.

(2) This section applies to trusts created either before or after the commencement of this Act, but nothing

nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

24. (1) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may obtain, and, if thereto required by any person having any beneficial interest present or future or contingent in such leaseholds, shall use his best endeavours to obtain from time to time such renewal on the accustomed and reasonable terms, and for that purpose such 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 in that behalf:

Power of trustees of renewable leaseholds to renew and raise money for the purpose.
56 & 57 Vic., c. 53, s. 19.

Provided that where by the terms of the settlement or will 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 on the part of the trustee.

(2) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of such lands or of any other lands for the time being subject to the uses or trusts to which the lands to be comprised in the renewed lease are subject, and no person advancing money upon a mortgage purporting to be under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose.

(3) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

25.

25. (1) The receipt in writing of any trustee for any money, securities, or other personal property, or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

Power of trustee to give receipts. 56 & 57 Vic., c. 53, s. 20. See 1898, No. 4, s. 64.

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

26. (1) Executors or administrators may pay or allow any debt or claim on any evidence they think sufficient.

Power for executors, administrators, and trustees to compound, &c. *Ibid.* s. 21.

(2) Executors or administrators, or two or more trustees, acting together, or a sole acting trustee where by the instrument (if any) creating the trust a sole trustee is authorised to execute the trusts and powers thereof, or a sole executor or administrator may, if and as he or they may think fit,—

- (a) accept any composition or any security, real or personal, for any debt or for any property claimed;
- (b) allow any time for payment for any debt; or
- (c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trust; and
- (d) for any of the purposes aforesaid, enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things, as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(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 executorships, administratorships, and trusts constituted or created either before or after the commencement of this Act. (5)

(5) Section ninety-six of the Wills Probate and Administration Act, 1898, is hereby repealed.

27. 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.

Powers of two or more trustees.
See 56 & 57 Vic., c. 53, s. 22.

28. (1) Until the appointment of new trustees the legal representatives for the time being of a sole trustee, or where there were two or more trustees, then of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee.

Survivorship of trusts and powers.
1 & 2 Geo. V, c. 37, s. 8.

(2) This section shall take effect subject to any direction to the contrary expressed in the instrument (if any) creating the power or trust.

(3) This section applies only to trusts constituted after or created by instruments coming into operation after the commencement of this Act.

29. 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 :

Exoneraton of trustees in respect of certain powers of attorney.
56 & 57 Vic., c. 53, s. 23.
1898, No. 4, s. 19.

Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that 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.

30. A trustee shall, without prejudice to the provisions of the instrument (if any) creating the trust, be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity; and 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,

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

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 default; and 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.

31. (1) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether—

- (a) absolutely, or
- (b) contingently on his attaining any stated age, or on the occurrence of any event before his attaining that age; or
- (c) absolutely, but subject to defeasance on the occurrence of any event,

the trustees may at their sole discretion pay to the infant's parent or guardian (if any), or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property or any part thereof, whether there is any other fund applicable to the same purpose or any person bound by law to provide for the infant's maintenance or education or not.

(2) The trustees shall accumulate all the residue of that income in the way of compound interest by investing the same, and the resulting income thereof from time to time, on securities, on which they are by the settlement (if any), or by law authorised to invest trust money, and shall hold those accumulations for the benefit, in case (a) of such infant; in case (b) of the person who ultimately becomes entitled to the property from which the same arise; and in case (c) of such infant, or, in the event of such defeasance taking effect, of such infant and the person entitled upon such defeasance, according to their respective interests therein.

(3) Provided that the trustees may at any time if they think fit apply those accumulations or any part thereof as if the same were income arising in the then current year.

(4)

Application
by trustees
of income of
property of
infant for
maintenance,
&c.
See 44 & 45
Vic., c. 41,
s. 43.
1898, No. 4,
s. 18.

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

(5) This section applies whether that instrument comes into operation before or after the commencement of this Act.

32. (1) A trustee may, without the institution of a suit, apply by summons upon a written statement to the Chief Judge or Judge in Equity for his opinion, advice, or direction on any question respecting the management or administration of the trust property; such application shall not be served upon any person except by direction of the judge.

Trustee may apply by summons for opinion, advice, &c., in management, &c., of trust property.
See 1898, No. 4, s. 20.

(2) The trustee, acting upon the opinion, advice, or direction given by the judge shall be deemed, so far as regard his own responsibility, to have discharged his duty as such trustee in the subject matter of the said application.

(3) This Act shall not extend to indemnify any trustee in respect of any act done in accordance with such opinion, advice, or direction of such judge if such trustee has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction.

Trustee following the advice is indemnified the absence of fraud.

(4) Every such statement shall be signed by the trustee, his counsel, or solicitor, and the judge may require the applicant to attend him in Chambers or in Court when he deems it necessary, and such trustee may appear by counsel or solicitor, and the costs of such application as aforesaid shall be in the discretion of the judge to whom the said application is made.

Application, how made.

DIVISION 7.—*Delegation of powers.*

33. (1) A trustee who is absent from, or is about to depart from New South Wales, may by deed delegate to any person residing in New South Wales and capable of being appointed a trustee of the trust, the execution of the trust in whole or in part.

Trustee absent or about to leave New South Wales may delegate certain powers.
See 1615, No. 31, ss. 3-4, N.Z. Trustees Act, 1908, s. 103-4, 5 Geo. V., c. 13, s. 1 (1).

(2)

(2) Such delegation shall not become operative unless and until the consent thereto of the other trustee or trustees (if any) has been given in writing, and the deed and such consent have been registered.

(3) No such delegation shall be made to a person who is already a trustee, unless there will be at least two other trustees, or a trustee company, or the public trustee remaining in New South Wales to perform the trusts.

(4) This section shall not be deemed to empower a trustee who remains out of New South Wales for a continuous period of two years to delegate the trust for any further period than two years from the date of the first delegation by him.

(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 constituted or created either before or after the commencement of this Act.

34. (1) A trustee who so 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. Original trustee to remain responsible. See *Ibid.* s. 5.

(2) Every delegate shall be subject to the jurisdiction of any court so far as respects the execution of the trust in the same manner as if he were the trustee delegating. Liability of delegate. *Ibid.*, s. 7. See 5 Geo. V. c. 13, s. 1 (3).

35. (1) No delegation heretofore made by deed by a trustee who was absent or about to depart from New South Wales, of any trusts or powers, and whether made with the consent in writing of all the trustees or not, and no act or thing done or suffered in reliance on the delegation shall be deemed invalid by reason only that the person delegating was a trustee: Provided that nothing herein shall validate any delegation expressly forbidden by the instrument creating the trust or power delegated. Validation. See *Ibid.* s. 6 N.Z. Trustee Act, 1908, s. 106.

(2)

(2) No such delegation shall be operative after the commencement of this Act unless and until it satisfies the requirements of section thirty-three of this Act.

36. (1) Where by any instrument the consent of any person is required to the exercise of a power or a trust, then in cases where under the law heretofore in force such right to consent could not have been delegated, such person may, by registered deed, delegate the right to consent for him to some person other than the donee of the power or the trustee.

Delegation of right to consent to exercise of a power.

(2) All the provisions of the instrument as to the exercise of the right to consent shall bind the person to whom the same is delegated, and such person shall be, and the person delegating shall remain, liable for any improper exercise of the same.

(3) Any delegation under this section shall not be operative for more than twelve months, except in cases where the delegation is made to the Public Trustee or a trustee company.

(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 where the instrument creating the power or trust came into operation before or comes into operation after the commencement of this Act.

37. (1) No person dealing in good faith with the delegate under any deed of delegation or power of attorney by this Part of this Act authorised or validated shall, by reason only that by such delegation or any evidence or document in connection therewith it appears that the delegate is acting in the execution of any trust, be affected for any purpose with notice of the trust.

Protection of persons dealing bona fide with delegate. See *Ibid.* s. 9. 5 Geo. V, c. 13, s. 2 (3), (4).

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

38. Every delegation under this Part of this Act shall be deemed to be a power of attorney within the meaning of section one hundred and thirty-four of the

Delegation deemed a power of attorney within s. 134 of C. & L. of P. Act, 1917. See *Ibid.* s. 8.

Conveyancing

Conveyancing and Law of Property Act, 1917, and persons dealing with the delegate in good faith and without notice of the revocation of such delegation, and whether with or without valuable consideration, shall be entitled to the same protection as is by that section afforded to persons dealing with the donee of a power of attorney.

PART III.

POWERS OF THE COURT.

DIVISION 1.—*Appointment of new trustees and vesting orders.*

39. (1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt, and upon the retirement of one or more of a number of trustees may make an order for the reappointment of the continuing trustees alone as new trustees, and whether such reappointment is made or not may make an order vesting the trust property in such continuing trustees alone.

(2) 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.

(3)

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

40. In any of the following cases, namely—

- (1) where the Court appoints or has appointed a new trustee; and
 - (2) where a trustee entitled to or possessed of any property either solely or jointly with any other person—
 - (a) is an infant, or
 - (b) is an insane person or person of unsound mind, or
 - (c) is out of the jurisdiction of the Court, or
 - (d) cannot be found; or
 - (e) neglects or refuses to convey any property, or to receive the dividends or income of any stock, or to sue for or recover a chose in action 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; and
 - (3) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any property; and
 - (4) 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; and
 - (5) where there is no legal representative to a trustee who was entitled to or possessed of any property or where it is uncertain who is the legal representative or devisee of a trustee who was entitled to or possessed of any property; and
 - (6) where any person neglects or refuses to convey any property, or to receive the dividends or income of any stock, or to sue for or recover a chose in accordance with the terms of an order of the court,
- the Court may make an order (in this Act called a vesting order) vesting the property in any such person

Vesting
orders as to
property.
See 56 & 57
Vic., c. 53,
ss. 26, 35.
1898, No. 4,
ss. 29, 38.

person in any such manner and for any such estate as the Court may direct, or releasing or disposing of any contingent right to such person as the Court may direct :

Provided that 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.

- (7) A vesting order under this section shall operate to convey to the person named in the order, the property to which the order relates, and shall vest in such person the right to transfer or call for a transfer of stock, and to receive the dividends or income thereof, and to sue for or recover choses in action.
- (8) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself or any other person, according to the order, and all companies and associations shall obey every order under this section according to its tenor.
- (9) After notice in writing of an order under this section it shall not be lawful for any company or association to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

41. 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 an order releasing the property from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the property.

42. Where any person entitled to or possessed of property by way of mortgage is—

- (a) an infant ;
 (b) an insane person or person of unsound mind,
 the

Orders as to
contingent
rights of
unborn
persons.

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

Vesting order
in place of
conveyance
by infant or
insane
mortgagee.

See *ibid.* s. 28.
1898, No. 4,
ss. 31, 39.

the Court may make an order vesting or releasing or disposing of the property, with the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action or any interest in respect thereof, in like manner as in the case of a trustee being an infant, or insane person, or person of unsound mind.

43. Where a mortgagee of land has died without having entered into possession thereof, 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, then the Court may make an order vesting the land in such person or persons in such manner and for such estate as the Court may direct in any of the following cases, namely,—

Vesting order
in place of con-
veyance by
personal repre-
sentative of
mortgagee, &c.
Ibid. s. 29.
Ibid. s. 32.

- (a) where the legal representative or devisee of the mortgagee is out of the jurisdiction of the Court or cannot be found; and
- (b) where the legal representative or devisee 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; and
- (c) where it is uncertain which of several devisees of the mortgagee was the survivor; and
- (d) where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the legal representative of the mortgagee whether he is living or dead; and
- (e) 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 or devisee.

44. Where the Court makes a decree directing the sale or mortgage of any land, 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; and 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.

45. 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 under the Partition Act, 1900, or exchange of any land, or generally where any decree is made for the conveyance of any land, either in cases arising out of the doctrine of election or otherwise, the Court may declare 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, or may declare 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, and thereupon the Court may make a vesting order relating to the rights of those persons born and unborn as if they had been trustees.

46. (1) A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a new trustee have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the property, 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, and shall in every other case have the same effect as if the trustee or other person or description or class of persons

to

Vesting order consequential on decree for sale or mortgage of land.

See 56 & 57 Vic., c. 53, s. 30.

57 Vic., c. 10, s. 1.

1898, No. 4, ss. 33-4.

Vesting order consequential on judgment for specific performance, &c.

See 56 & 57 Vic., c. 53, s. 31.

1900, No. 24, s. 6.

1898, No. 4, s. 35.

Effect of vesting order.

See *ibid.* s. 32.

1898, No. 4, s. 36.

to whose rights, or supposed rights, the said provisions 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.

(2) In the case of land under the provisions of the Real Property Act, 1900, such land shall so vest upon registration of the order in accordance with that Act.

47. In all cases where a vesting order can be made under any of the foregoing provisions 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 decree shall have the same effect as an order under the appropriate provision.

48. (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 beneficially interested in the property, whether under disability or not, or on the application of any person duly appointed trustee thereof.

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

49. Every trustee appointed by a court of competent jurisdiction 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.

50. The Court may order the costs and expenses of and incident to any application for any order, or for any direction opinion or advice, or of or incident to any order, or of any payment into or out of Court, under this Act, to be paid or raised out of the property in respect whereof the same is made or given, or which is paid into or out of Court, 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.

51. 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. 1898, No. 4, s. 45.

52. Where a vesting order is made under this Act as to any property founded or purporting to be founded on an allegation of the existence of any of the grounds therefor mentioned in section forty of this Act, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

Orders made upon certain allegations to be conclusive evidence. See 56 & 57 Vic., c. 53, s. 40. 1898, No. 4, s. 58.

DIVISION 2.—Relief from breaches of trust.

53. (1) If it appears to the Court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but 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 such breach, then the Court may relieve the trustee either wholly or partly from personal liability for the same.

Trustees may be relieved from breaches of trust. 59 & 60 Vic., c. 35, s. 3. 1902, No. 98, s. 9.

(2) In the case of executors and administrators the powers of the Court may be exercised by the Supreme Court in its probate as well as in its equity jurisdiction.

DIVISION 3.—Miscellaneous powers of the Court.

54. 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

Power to make decree in absence of a trustee. 56 & 57 Vic., c. 53, s. 43. 1898, No. 4, s. 57.

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.

55. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, 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.

Power to make beneficiary indemnify for breach of trust.
56 & 57 Vic., c. 53, s. 45.

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

56. Upon any application being presented under this part of this Act to the Court 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 person, and may postpone making any order until such lastmentioned application has been heard.

Proceedings in lunacy may be directed.
1898, No. 4, s. 55.

57. Upon any application under this part of this Act being presented to the Court, the Court may postpone making any order upon such application until the right of the applicant has been declared in a suit duly instituted for that purpose.

Suit may be directed.
Ibid. s. 56.

PART IV.

PAYMENT INTO COURT BY TRUSTEES.

58. (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the Court; and the same shall, subject to rules of Court, be dealt with according to the orders of the Court.

Payment into court by trustees.
See 56 & 57 Vic., c. 53, s. 42.
1898, No. 4, s. 59.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) 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 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; and where any such moneys or securities are deposited with any banker, broker, or other depository, the Court may order transfer, payment, or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into Court, and 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 moneys and securities so transferred, paid, or delivered.

59. (1) Where any infant or person of unsound mind is entitled to any money payable in discharge of any property conveyed under Part III of this Act, the person by whom such money is payable may pay the same to the Master in Equity in trust in any cause then depending concerning such money, or, if there is no such cause, to the credit of such infant or person of unsound mind subject to the order or disposition of the Court.

Certain moneys of infants and persons of unsound mind to be paid into Court.
1898, No. 4, s. 62.

(2) The Court may make such order as it thinks fit as to the investment, payment, or distribution of the money so paid in or the dividends or income thereof.

(3)

(3) The receipt or certificate of the Master in Equity for the moneys, stocks, or securities paid in, transferred, or deposited with him under the provisions of this Act shall be an effectual discharge therefor.

Receipt of Master to be a discharge to trustees.

Ibid. s. 63.

60. (1) 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;

Life assurance companies—payment into court by.

See 59 & 60 Vic., c. 8.

“Life policy” includes any policy not foreign to the business of life assurance.

(2) Subject to rules of Court any life assurance company may pay into the Court any moneys payable by them under a life policy in respect of which, in the opinion of their board of directors, no sufficient discharge can otherwise be obtained.

(3) The receipt or certificate of the proper officer shall be a sufficient discharge to the company for the moneys so paid into Court, and such moneys shall, subject to rules of Court, be dealt with according to the orders of the Court.

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

PART V.

EXECUTORS AND ADMINISTRATORS.

61. (1) Executors and administrators shall for all purposes, but subject as hereinafter provided, be deemed trustees.

(2) Some or one only of several joint executors or administrators shall not be entitled to give receipts, or release or pay debts, or sell, mortgage, or otherwise deal with the assets of a deceased person, without such concurrence of the other or others as is by this Act or otherwise required in the case of trustees, or without the leave of the Court.

(3)

(3) Subject as hereinafter provided an executor or an administrator may retire from his office, and shall be liable to be removed therefrom on the same grounds as trustees are by this Act or otherwise removable: Provided that—

- (a) an administrator shall only be entitled to retire with the leave of the Court;
- (b) an executor shall not be entitled to retire, except by leave of the Court, within a period of twelve months from the grant of probate to him;
- (c) subject as in the last preceding paragraph, provided the provisions of Division 2 of Part II of this Act shall apply to executors: Provided that an executor so retiring shall not be discharged under this section unless there will be at least two trustees, or the public trustee, or a trustee company to perform the trust;
- (d) upon the retirement of an administrator, and an executor under paragraph (b) hereof, and upon the removal of an executor or administrator the appointment of a person or persons in the place of such executor or administrator shall be made by the Court, and the Court may appoint such person or persons as it thinks fit, and upon the retirement or removal of one or more of a number of executors or administrators may appoint the continuing executors or administrators alone.

(4) (a) "The Court" in this section means the Supreme Court in its probate jurisdiction, and the provisions of the Wills, Probate and Administration Act, 1898, as to grants of administration of assets remaining unadministered apply to appointments made in pursuance of this section.

(b) In respect of the removal of an executor and the appointment of a person or persons in his place the power, authority and jurisdiction of the Supreme Court in its probate jurisdiction may be exercised by the Supreme Court in its equitable jurisdiction.

(5)

(5) This section shall have effect subject—

- (a) in the case of executors and administrators with the will annexed to the terms of the will and the grant of probate or administration; and
- (b) in the case of other administrators to the terms of the grant of administration.

(6) This section applies to the public trustee as executor or administrator.

(7) This section applies to executors and administrators under grants made before as well as after the commencement of this Act.

62. (1) The legal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person, or to a share in his residuary estate, or, if the person entitled is an infant, or person of unsound mind, with the consent of his trustee, guardian, or committee, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with any rules made under this Act, the whole or any part of the property of the deceased person in such manner as they think fit.

Appropriation of land in satisfaction of legacy or share in estate.
See 60 & 61 Vic., c. 65, s. 4.

(2) Before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within such time as may be prescribed by rule apply to the Court, and such valuation and appropriation shall be conclusive save as otherwise directed by the Court.

(3) Where any property is so appropriated a conveyance or an acknowledgment in respect thereof by the legal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

(4)

(4) In the case of land under the provisions of the Real Property Act, 1900, the production of the prescribed evidence of an appropriation under this section shall authorise the Registrar-General to register the person to whom the property is appropriated as the registered proprietor of the land.

PART VI.

MISCELLANEOUS PROVISIONS.

63. (1) No property vested in any person upon any trust or by way of mortgage shall escheat or be forfeited to His Majesty by reason of the attainder or conviction for any offence of the trustee or mortgagee, but shall remain in the trustee or mortgagee or survive to his co-trustee, or vest in his representative as if no such attainder or conviction had taken place.

No escheat of property held upon trust or mortgage.
1898, No. 4, ss. 65, 66.
See 56 & 57 Vic. c. 58, s. 48.

(2) Nothing contained in this section shall 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 such property, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this Act had not passed.

64. When 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, by virtue of the order or instrument appointing the new trustee, and without other assurance in the law, become and be legally and effectually vested in such new trustee either solely or jointly with any surviving or continuing trustee as the case may require.

Divesting of trust estates from the Chief Justice upon the appointment of new trustees.
1898, No. 4, s. 67.
See 56 & 57 Vic. c. 58, s. 49.

65.

65. 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 the said Court, or to file any report or account in the office of the Master in Equity, the said 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 the said Court thinks fit to direct.

Power to
compel
trustees to
account.
Ibid. s. 68.

66. This Act and every order purporting to be made under this Act shall be a complete indemnity to all companies, associations, and all persons for any acts done pursuant thereto; and it shall not be necessary for the company, association, or for any person to inquire concerning the propriety of the order or whether the Court had jurisdiction to make the same.

Indemnity.
See 56 & 57
Vic., c. 53,
s. 49.
1898, No. 4,
s. 48.

67. (1) Notwithstanding anything contained in the Perpetual Trustee Company (Limited) Act or the Permanent Trustee Company (Limited) Act it shall not be necessary to advertise in any newspaper notice of any application for the appointment or the consent of the Chief Judge in Equity to the appointment of either of the said companies as trustees where all persons beneficially interested are before the Court or have had notice of the intended application to the Court or judge.

Advertisements of
proposed
appointment
of trustee
companies
1902, No. 98,
s. 7.

(2) In any such case in which the Court or a Judge in Equity directs any reference to the Master in Equity to appoint a new trustee either of the said companies 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.

68. (1) A trustee company may be appointed and may lawfully act as the sole trustee of any will or other instrument notwithstanding that the same may provide for or direct the appointment of two or more trustees.

Trustee companies may be
appointed
sole trustees.
N.Z. Act,
1908, No. 202,
s. 100.

(2)

(2) This section does not apply to any instrument which provides that any such company shall not be appointed a trustee thereof.

(3) This section extends to instruments made before or after the commencement of this Act.

69. 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.

SCHEDULE.

Reference to Act.	Subject or short title.	Extent of repeal.
1898, No. 4 ...	Trustee Act, 1898	The whole Act.
1898, No. 13 ...	Wills, Probate and Administration Act, 1898.	Section 96.
1898, No. 17 ...	Conveyancing and Law of Property Act, 1898.	Sections 82 to 90 inclusive.
1900, No. 24 ...	Partition Act, 1900	Section 6.
1902, No. 98 ...	Trustee Act Amendment Act, 1902.	Sections 2 to 9 inclusive.
1915, No. 31 ...	Trustees Delegation of Powers Act, 1915.	The whole Act.
1916, No. 40 ...	Sales by Trustees Confirmation Act, 1916.	The whole Act.