

Trustee Bill.

TABLE showing repealed Acts and sections of Acts and how the same have been dealt with.

Act.	Section.	Subject.	How dealt with.	Section of Trustee Bill.
1898, No. 4 (Trustee)	2-3	Repeal: Interpretation	Replaced	2-5
	4 (2)	Substitution of investments	Repealed and re-enacted.	
	4-5	Investments	Replaced	13
	6-7	Appointment of new trustees	Replaced	6, 9
	8	Powers of sale, &c., to raise money charged by a testator.	Repealed; see Wills, Probate and Administration Act, 1898.	
	9-17	Powers of sale, exchange, &c.....	Replaced	25, 30 (4), 35
	18	Power to apply income of infants for maintenance.	Partially repealed and replaced.	41
	19	Payments under power of attorney	Replaced	54
	20	Petitions for advice	Repealed and re-enacted.	58
	21	Tenants for life may execute power notwithstanding encumbrances.	Repealed; see 1898, No. 17, s. 37 (9).	
	22	Powers may be negatived by express declaration.	Replaced; see various sections.	
	23	No persons other than those entitled under settlement to be affected.	Replaced; see various sections.	
	24	Operation of part of Act.....	Repealed.	
	25-28	Appointment of new trustees by Court.	Replaced	67
	29	Vesting orders as to land	Replaced	68
	30	Contingent right of unborn trustee	Replaced	69
	31	Vesting of lands of infants or insane mortgagee.	Replaced	71
	32	Power to convey in place of mortgagee.	Replaced	72
	33, 34	When a decree is made for sale of real estate for payment of debts.	Replaced	73
	35	Vesting order consequential or judgment for specific performances, &c.	Replaced	74
36	Effect of vesting order	Replaced	75	
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TABLE showing repealed Acts and sections of Acts and how the same have been dealt with—*continued*.

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	45	Who may apply	Replaced	86	
	46	Power to go before Master in first instance ; costs, &c.	Repealed, obsolete.		
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	67	Power to compel trustees to account	Replaced	94	
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ENGLISH ACTS IN BILL.

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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1923.

A BILL

To amend and consolidate the law relating to trustees and trust property; to amend in certain respects the law relating to executors and administrators; and for such purposes to repeal certain Acts and to amend certain other Acts.

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, 1923."

Short title and commencement.

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

8988

1—A (4)

2.

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

Division into parts.

PART I.—INTERPRETATION.

PART II.—TRUSTEES.

DIVISION 1.—*Appointment, retirement, and disclaimer.*

DIVISION 2.—*Powers and duties.*

DIVISION 3.—*Delegation.*

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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.—*Orders.*

PART IV.—PAYMENT INTO COURT.

PART V.—MISCELLANEOUS PROVISIONS.

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

Repeal. Schedule.

(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.

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

Savings. See 45 & 46 Vic., c. 39, s. 13.

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

Conveyancing Act, 1919, s. 4.

(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; or

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

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

(2)

(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.

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.

“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”

- “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 deed will and Act of Parliament.
- “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” has a meaning corresponding with that of mortgage, and includes every person deriving title under the original mortgagee.
- “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.
- “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.
- “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 ”

-
- “ 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, whether in possession or not.
 - “ 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 the public trustee and a trustee company.
 - “ Trustee company ” means a company authorised by Act of Parliament of this State to act as trustee in New South Wales.
 - “ 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, and disclaimer.*

Appointment.

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.

New trustee.
See 56 & 57
Vic., c. 53,
s. 10.

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

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

- (a) where a trustee is dead ;
- (b) where a trustee remains out of New South Wales for more than two years ;
- (c) where a trustee desires to be discharged from all or any of the trusts or powers reposed in or conferred on him ;
- (d) where a trustee refuses or is unfit to act in such trusts or powers, or is incapable of acting therein, or is an infant ;
- (e) where a trustee is removed under a power contained in the instrument creating the trust ;
- (f) where a trustee being a corporation is dissolved.

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

Ibid. s. 110
(2).

Ibid. s. 110
(3)

(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.

(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 representatives of the last surviving or continuing trustee.

(5)

(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;
- (c) 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, 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.

12 & 13
Geo. V, c. 16,
s. 109.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11)

(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 if he does not so act, the fact that he was willing to act shall not affect the validity of an appointment made by any other person.

(12) The provisions of this section shall be construed as supplemental to the provisions of the instrument, if any, creating the trust. Exclusion of *Re Sichel* ([1916] 1 Ch. 358).

(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 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.

7. (1) A new trustee may by registered deed be appointed in addition to any existing trustee or trustees. Additional trustee. 12 & 13

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

(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)

Trustee.

(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 eight, nine, twelve, thirteen, fourteen, fifteen of section six of this Act shall apply to the appointment of an additional trustee.

Retirement.

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

Retirement.
See 56 & 57
Vic., c. 53,
s. 11.
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 the same or other registered deed to the retirement; and
- (b) 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) The retirement shall discharge the trustee 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) 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.

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

(7)

(7) 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.

(8) 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.
cf. 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) the appropriate entries are made by the Registrar-General in the register book.

(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—

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

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

(b)

- (b) any property subject to the provisions of the Mining Act, 1906, or the Crown Lands Consolidation Act, 1913, or any other Act relating to Crown lands ;
- (c) any property a conveyance of which is required to be registered by 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.

(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—

12 & 13
Geo. V, c. 16,
s. 112 (4).

- (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 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) 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.

(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.

Disclaimer.

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.

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

Registration.

11. (1) Any instrument by which a new trustee is appointed, or by which a trustee retires or disclaims, 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.

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

(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 whether the trust 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 an appointment or retirement.

(4) In the case of land subject to the provisions of the Real Property Act, 1900, where an appointment or retirement is registered, the Registrar-General is hereby authorised and directed to make the appropriate entries so that the property may be duly vested without any transfer:

Provided that the Registrar-General shall not be bound to make the entries until—

- (a) a written request is made to him by the persons in whom the property is to be vested;
- (b) such evidence is given as he may reasonably require; and
- (c) such notice, if any, is given to any other person as he may direct.

(5)

(5) Nothing in this section shall prevent an appointment retirement or disclaimer 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.

Protection of purchasers.

12. (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 two years, or refuses or is unfit to act, or is incapable of acting, shall, in favour of a subsequent purchaser or mortgagee, be conclusive evidence of the matter so stated. Evidence as to a vacancy in a trust. 12 & 13 Geo. V, c. 16, s. 111.

(2) In favour of a subsequent purchaser or mortgagee any appointment of a new trustee depending upon that statement, and any vesting consequent thereon, shall be valid.

(3) The protection afforded by this section shall extend to the Registrar-General.

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

DIVISION 2.—Powers and duties.

Investment.

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

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

- (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) any debentures or securities guaranteed by the Government of New South Wales; cf. 1906, No. 48, s. 49.

(c)

- (c) any debentures or securities issued by the 1919, No. 41, municipal council of Sydney or any municipal s. 191 (1). or shire council in New South Wales;
- (d) real securities in New South Wales;
- (e) deposit in the Commonwealth Bank of Australia or in the Government Savings Bank of New South Wales;
- (f) 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) In particular and without prejudice to the generality of any other provision of this Act, where a trustee is authorised by any instrument to invest in real or Government securities anywhere outside New South Wales, the authority shall be deemed to extend to investment in real or Government securities in New South Wales.

(4) In the case of any of the securities ^{Vict. Act} mentioned in paragraphs (a) (b) and (c) of subsection ^{2,741, ss. 4, 5.} 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.

(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, ^{Ibid.} the trustee may at any time sell and dispose of the security at a price less than its redemption value, or less than its value at par in case it is not redeemable.

(7) In the case of deposit in a bank, a trustee ^{1906, No. 48,} may invest for a fixed period or otherwise. ^{s. 9.}

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

(9)

(9) The powers conferred by this section shall 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. 56 & 57 Vic., c. 53, s. 3.

(10) 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. Ibid. s. 3. cf. 1906, No. 48, s. 59.

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

14. (1) A trustee may, pending the negotiation and preparation of any security or during any other time while an investment is being sought for, pay any trust money into any bank 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. Interim investment. cf. 12 & 13 Geo. V, c. 16, s. 120 (1).

(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.

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

- (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 there shall be no breach of any covenant by the borrower for the maintenance and protection of the property; and
- (c) that in the event of non-payment of interest within the specified time, or of a breach of any such covenant, the whole of the moneys secured by the mortgage shall immediately become due and payable. (2)

(2) 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.

(3) Where the loan is made under the order of the Court, the powers conferred by this section shall apply only if and as far as the Court shall by order direct.

(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.

16. (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.

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

(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.

17. (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.

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

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 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.

18. (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, s. 5, 8 (4), 9 (2).
1902, No. 98, s. 4

19. (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 or mortgagee of the released part of the property, or the Registrar-General, 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.

20.

20. (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) 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 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.

21. (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—

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

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

(b)

- (b) renounce the right; or
- (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.

(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.

22. (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.
cf. 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.

23. (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)

(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 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) 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.

(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.

24. (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.

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

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

Sale and other dealings.

25. (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 property or any part thereof were in

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

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) 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 concurs 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 a trust or power created by an instrument coming into operation before or after the commencement of this Act.

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

(2) Where there is no substantial building on the land the terms of deferred payment may provide either—

- (a) for the purchase money being paid by instalments ; or
- (b) for the unpaid purchase money being secured by mortgage.

(3)

(3) Where there is any substantial building on the land the terms of deferred payment shall provide for the unpaid purchase money being secured by mortgage.

(4) If the terms of deferred payment provide for the purchase money being paid by instalments—

- (a) one-tenth part at least of the purchase money shall be paid on the execution of the contract of sale ;
- (b) the balance of the purchase money shall be payable in equal instalments at intervals of not more than half a year beginning from the date of the contract of sale, and shall bear interest on the amount from time to time unpaid at a rate of not less than five pounds per centum per annum payable half-yearly or oftener ;
- (c) the whole of the purchase money and interest shall be payable within a period not exceeding five years from the date of the contract of sale ;
- (d) at any time after one-tenth part of the purchase money has been paid, the trustee may let the purchaser into possession ;
- (e) the contract of sale shall include a provision that if the purchaser fails to comply with the terms of the contract, the trustee may, if he thinks fit, cancel the contract and retain any moneys already paid.

(5) If the terms of deferred payment provide for the unpaid purchase money being secured by mortgage— of. 12 & 13 Geo. V, c. 16, s. 119 (2).

- (a) one-third part at least of the purchase money shall be paid on the execution of the contract of sale ;
- (b) 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 on the amount from time to time unpaid at a rate of not less than five pounds per centum per annum payable half-yearly or oftener ;

(c)

- (c) the mortgage may be for any period not exceeding seven years from the date of the contract of sale, and the provisions of section fifteen of this Act shall apply thereto;
- (d) the mortgage shall contain covenants by the mortgagor to pay the principal money secured and the interest thereon, and also to keep all buildings, if any, comprised therein insured against loss or damage by fire to the full insurable value thereof;
- (e) the trustee shall not be bound to obtain any report as to the value of the land or other property to be comprised in the mortgage, or any advice as to the making of the loan, 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) 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.

27. (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.

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

(2) This section shall be deemed to have applied as from the commencement of that Act.

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

Depreciatory conditions. Ibid. 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

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.

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

(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.

30. (1) Where a trustee is authorised by the instrument, if any, creating the trust or by law to dispose of land by way of sale exchange or partition, he may so dispose— Sale exchange and partition. See 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.

(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, 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.

(4) The exchange or partition may be made upon terms of giving or receiving any money for equality of exchange. 1898, No. 4, s. 9.

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

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

31.

31. (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.

Sale after right of redemption barred.
See 1 & 2 Geo. V, c. 37, s. 9.

(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) 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.

(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.

32. (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, provided that the trustee has acted bona fide and on the advice of a person whom he reasonably believed.

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 mortgagee or the Registrar-General 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.

33. (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 employed independently of the lessor, whether the valuer carried on business in the locality where the property is situate or elsewhere.

(3) A subsequent purchaser or mortgagee or the Registrar-General 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.

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

- (a) where he is a trustee under a trust for sale and has not a power at discretion to postpone the sale, the lease may be for any term not exceeding three years; cf. 1919, No. 6, s. 154.
- (b) where he is not a trustee under a trust for sale and has not a power of sale, the lease may be for any term not exceeding five years; cf. 1906, No. 6, 106 (3).
- (c) where he is not a trustee under a trust for sale but has a power of sale, the lease may be for any term not exceeding ten years. cf. 1898, No. 17, s. 68.

(2)

(2) 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 or requires the trustee to make the lease.

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

(4) 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.

35. (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. cf. 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.

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

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.

36. (1) Where a trustee is authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust 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 held upon the same trusts as the capital money.

Raising money.
12 & 13
Geo. V, c. 16,
s. 122 (1).

(2) This section does not apply to trustees of a settlement within the meaning of Part IV of the Conveyancing and Law of Property Act, 1898.

[NOTE.—Quære whether this subsection should be omitted. There is a similar provision in the English Act, but here the restriction would apparently destroy, to a large extent, the value of the section.]

37. 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 as to the application thereof.

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

Property not in possession.

38. (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—

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

- (a) may agree 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)

(d) 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, without being 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 his guardian, 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 his guardian.

(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.

Insurance.

39. (1) A trustee may insure against loss or damage by fire any insurable property. Insurance. See 56 & 57 Vic., c. 53, s. 18.

(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. Vict. Act No. 2,741, s. 22.

(3) The premiums may be paid by the trustee out of the income of the property insured 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.

40. (1) Where a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of Part IV of the Conveyancing and Law of Property Act, 1898, whether by fire or otherwise, has been kept up— Application of insurance money. cf. 12 & 13 Geo. V, c. 16, s. 126.

- (a) under any trust in that behalf; or
- (b) under any power statutory or otherwise; or
- (c) in performance of any covenant, or of any obligation statutory or otherwise; or
- (d) by a tenant for life impeachable for waste,

the money receivable by a trustee or any beneficiary under the policy shall be capital money for the purposes of the trust or settlement, as the case may be.

(2) If the money is receivable by any person other than the trustee of the trust or settlement, such person shall recover and receive the same, and pay the net residue of the money, after discharging any costs of recovering and receiving the same, to the trustee of the trust or settlement, or, if there shall be no trustee capable of giving a discharge for the same, into court.

(3) If the money was receivable in respect of a settled estate within the meaning of Part IV of the Conveyancing

Conveyancing and Law of Property Act, 1898, or any building or works thereon, the same shall be deemed to be capital money arising under Part IV of that Act from the settled estate, and shall be invested or applied by the trustees or, if in court, under the direction of the Court accordingly.

(4) If the money was 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.

(5) 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.

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

(7) 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.

(8) In the case of money which is deemed to be capital money arising under Part IV of the Conveyancing and Law of Property Act, 1898, any such application by the trustees shall be subject to the provisions of that Part with respect to the application of capital money by the trustees of the settlement.

(9) 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.

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

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

(12)

(12) This section applies to a trust or settlement 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 alimentary trusts.

41. (1) Where any property is held in trust for an infant, the trustee may at his sole discretion pay to the parent or guardian, if any, of the infant or otherwise apply the income of the property or any part thereof for or towards the maintenance education or benefit of the infant.

Maintenance and accumulation of income during infancy.
cf. 12 & 13 Geo. V, c. 16, s. 88.

(2) The power conferred by subsection one of this section shall be exercisable only during the infancy, if the interest of the infant so long continues, and subject to any prior interest or charge affecting the property, but may be exercised—

- (a) whatsoever the interest may be for which the property is held in trust for the infant ;
- (b) whether the interest is vested or contingent, but if the interest is contingent, then only in the cases mentioned in subsections nine and ten of this section ;
- (c) 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) 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.

(4) If the person for whom the property is held in trust has not on attaining the age of twenty-one years a vested interest in the income, then subject to any prior interest or charge affecting the property, but if the interest for which the property is held in trust for such person is contingent, then only in the cases mentioned

mentioned in subsections nine and ten of this section, the trustee shall thenceforth pay the income of the property and of any accretion thereto under subsection seven of this section to him, until he either attains a vested interest therein or dies or until failure of his interest.

(5) In the following cases the trustee shall hold the accumulation absolutely for the person for whom the property is held in trust, that is to say—

- (a) if that person attains the age of twenty-one years, or marries under that age, and his interest in the income during his infancy or until his marriage is a vested interest; or
- (b) if that person on attaining the age of twenty-one years or marriage under that age becomes entitled to the property from which the income arose in fee-simple, absolute or determinable, or absolutely.

(6) Any accumulations held in trust in accordance with subsection five of this section shall be so held without prejudice to any provision with respect thereto contained in any settlement by such person made under any statute during his infancy, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge.

(7) In any case other than the cases mentioned in subsection five of this section, and notwithstanding that the person for whom the property is held in trust had a vested interest in the income, the trustee shall hold the accumulations—

- (a) 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
- (b) 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.

(8)

(8) During the infancy of the person for whom the property is held in trust, 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.

(9) In the case of a contingent interest this section, except as provided in subsection ten thereof, applies only if the limitation or trust carries the intermediate income of the property.

(10) This section extends to a future or contingent legacy by the parent of, or a person standing in loco parentis to the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case the rate of interest shall be five pounds per centum per annum.

(11) 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 or his personal representatives absolutely.

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

(13) This section, and the repeal of section eighteen of the Trustee Act, 1898, apply only where that instrument comes into operation after the commencement of this Act.

42. (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.

Advancement.
cf. 12 & 13
Geo. V, c. 16,
s. 121.

(2)

(2) The power conferred by this section may be exercised—

- (a) 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
- (b) whether the person is so entitled in possession or in remainder or reversion.

(3) 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.

(4) 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, without the consent in writing of such person.

(5) 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.

(6) 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.

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

43. (1) Where any income is directed to be held on alimentary 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, 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.

Alimentary trusts.
Ibid. s. 115.

(2)

(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 during the trust period to the principal beneficiary absolutely, during that period he would be deprived of the right to receive the same or any part thereof.

[NOTE.—The words “ during the trust period . . . during that period ” are in the English section. Quære whether both references to the period should not be omitted.]

(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

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 alimentary 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.

Receipts and compounding.

44. (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.

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.

45. (1) 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, may, if and as they or he may think fit—

*Compound-
ing.*
56 & 57 Vic.,
c. 53, s. 21.

- (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;
- (c) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the estate or trust;
- (d) for any of those purposes enter into, give, execute, and do such agreements, instruments

of

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.

(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.

Safe custody, audit, and valuation.

46. (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 company whose business it is to undertake the safe custody of documents. Deposit for safe custody. 12 & 13 Geo. V, c. 16, s. 120 (2).

(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.

47. (1) A trustee may, in his absolute discretion, from time to time cause the accounts of the trust property to be 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. Audit. Ibid. s. 120 (7).

(2) The costs of the audit, including the fee of the auditor, 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)

(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.

48. (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.

49. (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. 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) 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.

50. (1) Where there are two or more trustees, and the trustees by writing under their hands authorise a bank—

Banks.
cf. (Q.) 6
Edw. VII,
No. 34, s. 6 ;
(W.A.) 64
Vict. No. 17,
s. 54 ; (N.Z.)
1908, No. 200,
s. 101 ; Vict.
No. 3,109.

- (a) to pay bills of exchange drawn upon the banking account of the trustees by the trustee or 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 the trustee or 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 Act 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.

51. (1) Where any property subject to a trust estate 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 :—

Foreign
Property.
Ibid. s. 125
(2).

- (a) selling, converting, collecting, getting in, and executing and perfecting assurances of, or managing, or cultivating, or otherwise administering the property ;
- (b) executing or exercising any discretion trust or power vested in the trustee in relation to the property.

(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)

(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.

52. (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, 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 trustee.

53. (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.

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

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

Protection

Protection of trustee.

54. (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.

Powers of attorney.
56 & 57 Vic.,
c. 53, s. 23.
1898, No. 4,
s. 10.

(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.

55. (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.

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

(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) 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.

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

56. (1) Where a trustee of a settlement or of a disposition on trust for sale 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)

(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 shall not have 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.

(7) In this section "settlement" has the same meaning as in Part IV of the Conveyancing and Law of Property Act, 1898.

57. (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.

Distribution where estate comprises leaseholds, and in certain other cases.
12 & 13 Geo. V, c. 16, s. 117.

(2)

(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.

58. (1) A trustee may apply to the Judge for his opinion advice or direction on any question respecting the management or administration of the trust property. Application for advice. See 1898, No. 4, s. 20.

(2) If the trustee acts in accordance with the opinion advice or direction, he shall be deemed, so far as regard 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) The application may be made as prescribed by rule of court without any person being served unless the Judge otherwise directs:

Provided that unless otherwise prescribed, the application may be made by petition or summons upon a written statement signed by the trustee, his counsel, or solicitor.

(4) The costs of the application shall be in the discretion of the Judge to whom the application is made, and the Judge may, if he thinks fit, assess the costs.

59. (1) A trustee may apply for a decision on any question respecting the interpretation of the trust instrument— Application for interpretation.

- (a) to the Judge, where the amount involved does not exceed five hundred pounds; and
- (b) to the Master in Equity, where the amount involved does not exceed two hundred pounds.

(2) The decision shall be binding upon all beneficiaries and persons claiming through or under them, as well as upon the trustee; and the trustee shall be deemed 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 decision.

(3)

(3) Any statement in the decision that the amount involved does not exceed five hundred pounds, or two hundred pounds, as the case may be, shall be conclusive evidence of the fact so stated.

(4) The application may be made as prescribed by rule of court, without any person being served, unless the Judge or Master otherwise directs.

(5) Evidence in support of the application may be by affidavit or otherwise.

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

DIVISION 3.—*Delegation.*

60. (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.

Absence or departure from New South Wales.

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

See 1915, No. 31, ss. 3-4;

(a) 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

N.Z. Trustees Act, 1908, s. 103-4; 5 Geo. V, c. 13, s. 1 (1).

(b) 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.

[NOTE.—Quære whether delegation to a co-trustee should be permitted.]

(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.

(5) The delegation 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.

(6)

(6) 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.

(7) Two or more trustees may delegate 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 the provisions therein contained.

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

61. (1) 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.

Liability of original trustee.
See 1915, No. 31, 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).

62. (1) Where a person whose consent is required 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.

Delegation of right to consent to exercise of trust or power.

(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.

63.

63. (1) No person dealing in good faith with the delegate under any deed of delegation authorised by this Part shall, by reason only that by the 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 with delegate. See 1915 No. 31, 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.

64. Every delegation under this Part shall be deemed to be a power of attorney within the meaning of Part XVI of the Conveyancing Act, 1919, and that Part with the exception of sections one hundred and sixty-one and one hundred and sixty-two shall apply thereto.

Delegation as a power of attorney. 1915, No. 31, s. 8.

65. (1) Any instrument by which a trust or the right to consent to the exercise of a trust or person is delegated may be registered in the office of the Registrar-General as prescribed.

Registration.

(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.

66. (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.

Provided that 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.

(2)

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

(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.

(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) In this section "trustee" includes a legal representative.

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

(9) 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.

67. (1) The Court may 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.

Power to appoint new trustees.
56 & 57 Vic., c. 53, s. 25.

(2) The appointment may be made whenever it is expedient to appoint a new trustee or new trustees, and it is inexpedient difficult or impracticable so to do without the assistance of the Court.

1898, No. 4, s. 25.
1902, No. 98, s. 8.

(3) In particular and without prejudice to the generality of any other provision of this section, 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, or being a corporation is in liquidation or is dissolved.

12 & 13 Geo. V, c. 16, s. 110 (8).

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

(5) 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.

(6) On any reference to the Master in Equity to appointed a new trustee 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.

1902, No. 98, s. 7.

(7) 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.

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

Vesting

Vesting orders.

68. (1) The Court may make an order in this Act called a vesting order.

Vesting orders generally.
See 56 & 57 Vic., c. 53, ss. 26, 35.
1898, No. 1, ss. 29, 33.
1902, No. 98, s. 8.

(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 person or person of unsound mind;
- (f) where a trustee is out of the jurisdiction of the Court;
- (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; and
- (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; and
- (l) 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 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;

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

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

(n)

(n) where the Court might have made a vesting order if this Act had not been passed.

[NOTE.—Paragraph (n) is intended to cover the case of the heir or devisee of a trustee in any old matter that may possibly still come before the Court.]

(3) The provisions of paragraphs (d), (e), (f), (g), 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) Where the vesting order is consequential ^{1902, No. 98,} on the retirement of one or more of a number of ^{s. 8.} trustees, the property may be vested in the continuing trustees alone.

(6) 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.

(7) The fact that the order is founded or pur- ^{See 56 & 57} ports to be founded on an allegation of the existence of ^{Vic., c. 53,} any of the matters mentioned or referred to in subsection ^{s. 40;} two of this section, shall be conclusive evidence of the ^{1898, No. 4,} matter so alleged in any Court upon any question as to ^{s. 58.} the validity of the order.

(8) This section shall not prevent the Court ^{Ibid.} from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

(9) Where by reason of the dissolution of a ^{12 & 13} corporation either before or after the commencement of ^{Geo. V, c. 16,} this Act a legal estate in any property has determined, ^{s. 113 (3).} 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.

69. 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—

Contingent rights of unborn persons.
56 & 57 Vic., c. 53, s. 27.
1898, No. 4, s. 30.

- (a) releasing the property from the contingent right; or
- (b) 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.

70. 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—

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

- (a) appointing a person to convey the property; or
- (b) 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.

71. Where any person entitled to or possessed of property by way of mortgage is an infant, or is an insane 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 person, or person of unsound mind.

Infant or insane mortgagee.
See 56 & 57 Vic., c. 53, s. 28.
1898, No. 4, ss. 31, 39.

72. (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)

(2) The order may only be made if the mortgagee did not enter into possession, and—

- (a) the money due in respect of the mortgage has been paid to a person entitled to receive the same; or
- (b) 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; and
- (c) where it is uncertain as to the legal representative of the mortgagee whether he is living or dead; and
- (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.

(4) The fact that the order is founded or pur-
 ports 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.

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

(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.

73. (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.

Decree for sale or mortgage of land.

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

57 & 58 Vic., c. 10, s. 1. 1898, No. 4, ss. 33, 34.

(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.

74. (1) The Court may make a vesting order where a decree is made by the Court for—

Decree for specific performance, and other matters.

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

1900, No. 24, s. 6.

1898, No. 4, s. 35.

- (a) the specific performance of a contract concerning any land;
- (b) the partition, or sale in lieu of partition of any land;
- (c) the exchange of any land;
- (d) the conveyance of any land, either in cases arising out of the doctrine of election or otherwise,

(2) For the purposes of this section the Court 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.

75. (1) In the case of a vesting order consequential 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 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.

Effect of vesting order. See 56 & 57 Vic., c. 53, s. 32. 1898, No. 4, s. 36.

(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, the land shall vest on registration of the order in the office of the Registrar-General as prescribed:

Provided that where the land is subject to the provisions of the Real Property Act, 1900, the land shall vest on registration of the order in accordance with that Act.

(4) In the case of property 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 Registrar-General or other proper officer is hereby authorised and directed, upon the vesting order being registered as prescribed, 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 any Act, whether of this State or otherwise;

(b)

(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.

(7) The person in whom the right to transfer ^{56 & 57 Vic., 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.

(8) After notice in writing of the vesting order ^{Ibid. s. 35 (4).} 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.

76. In all cases where a vesting order can be made ^{Appointment of person to convey, 56 & 57 Vic., c. 53, s. 33.} 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 ^{1898, No. 4, s. 37.} with the decree shall have the same effect as an order under the appropriate provision.

77. The powers conferred by this Act as to vesting ^{Trustees of charities. Ibid. s. 39. 1898, No. 4, s. 45.} 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.

DIVISION 2.—Dealings and improvements.

78. (1) Where in the management or administration ^{Advantageous dealings. cf. 12 & 13 Geo. V, c. 16, s. 123.} of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition or any purchase, investment, acquisition, expenditure, or other transaction, shall in the opinion of the Court be expedient, but the same cannot be effected by reason of the

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—

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

(3) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

(4) The application may be made as prescribed by rule of court.

(5) This section does not apply to trustees of a settlement within the meaning of Part IV of the Conveyancing and Law of Property Act, 1898.

[NOTE.—Quære whether subsections (3) and (5) should be omitted.]

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

78A. (1) The Court may authorise a sale of trust property by a trustee for sale, notwithstanding that the terms or consideration for the sale—

Advantageous sale.
cf. *in re* New ([1901] 2 Ch. 534).

- (a) may not be within the terms of the trust, or may be expressly forbidden by the trust; or
- (b) may not be within the statutory powers of the trustee.

(2) The sale may not be so authorised, unless it appears to the Court that the trustee is unable to effect a sale in accordance with the trust or with his statutory powers on such terms or for such consideration that the fair value would be obtained for the property.

(3) The sale may be authorised on such terms and for such consideration as the Court thinks fit.

(4)

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

[NOTE.—Quære whether in view of the preceding section, this section should be retained.]

79. (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—

Improve-
ments and
repairs.
1902, No. 98,
s. 10.

- (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) to erect any new buildings, dams, fences or other erections upon the land.

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

(5) Where the amount is authorised to be raised by mortgage the court may—

- (a) give directions to the trustee how the principal and interest are to be paid ;
- (b)

(b) require such provision for a sinking fund as may enable the mortgage to be paid off at any stated period according to the nature of the object for which the expenditure is authorised.

(6) Where the amount is authorised to be expended upon leasehold land the Court may require such provision for a sinking fund as the Court thinks proper.

(7) In every case 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) 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.

(9) Application to the Court under this section may be made as prescribed by rule of court :

Provided that unless otherwise prescribed, the application may be made by originating summons, and the rules and practice of the Court from time applying to the practice upon originating summons shall apply to an application under this section.

(10) In this section "trustee" includes a legal representative.

(11) Nothing in this section shall affect the generality of any other provision of this Act.

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

DIVISION 3.—*Relief and indemnity.*

80. (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)

(2) The relief may not be given unless it appears to the Court that the trustee—

- (a) has acted honestly and reasonably ; and
- (b) 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 this section the term " trustee " includes a legal representative, and 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.

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

(3) 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.

82. (1) Where any chattels belong to 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 valuation or otherwise. Division of chattels. cf. 12 & 13 Geo. V, c. 16, s. 125 (5).

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

83.

83. 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.

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

84. 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 person, and may postpone making any order until that application has been heard.

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

85. 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.

Suit.
Ibid. s. 56.

DIVISION 5.—Orders.

86. (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 of any person duly appointed trustee thereof.

Persons
entitled to
apply.
See 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 beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

87. (1) The Court may order the costs and expenses of and incident to any application or any order under this Act to be paid or raised 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. (2)

Power to
charge costs
on trust
estate.
See *Ibid.* s. 38.
1898, No. 4,
s. 54.

566

(2) This section shall extend to any direction opinion or advice, any decision on a question respecting the interpretation of a trust instrument, any payment into or out of Court, and any conveyance or transfer in pursuance of an order.

PART IV.

PAYMENT INTO COURT.

88. (1) Money or securities for money may be paid into the Court under this Part. Money and securities. 56 & 57 Vic., c. 53, s. 42. 1898, No. 4, s. 59.

(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 the money or securities so paid into Court. 1898, No. 4, s. 59.

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

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

89. (1) Payment into Court may be made by trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust. Trustees. Ibid. s. 59.

(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 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.

(3) If any such moneys or securities are deposited with any banker broker or other depositary, 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)

(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 moneys and securities so transferred paid or delivered.

90. (1) Payment into Court may, subject to rules of Court, be made by any life assurance company, where any money is payable by it under a life policy in respect of which, in the opinion of the board of directors, no sufficient discharge can otherwise be obtained.

Life assurance companies. See 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.

PART V.

MISCELLANEOUS PROVISIONS.

91. (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.

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

(2) Property so vested shall remain in the trustee or mortgagee or survive to his co-trustee, or vest in his 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.

92.

92. 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.

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

93. 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.

Compulsion to account. *Ibid.* s. 68.

94. (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. See 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.

95. 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

Amendment of other Acts.

96. (1) 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 thereof" the words "or to a legatee devisee or other person entitled to call for a conveyance thereof" are inserted.

See Trustee Act, 1923, s.

(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.

(2) Section ninety-six of the Wills Probate and Administration Act, 1898, is omitted, and the following new sections inserted in lieu thereof:—

96. (1) Any executor or administrator may—

Compound-
ing.
56 & 57 Vic.,
c. 53, s. 21.

(a) pay or allow any debt or claim on any evidence that he thinks sufficient;

(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;

(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 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.

(2) This section applies to executors and administrators appointed either before or after the commencement of this Act.

96A. (1) An executor or administrator may, instead of acting personally, employ and pay an agent, whether being a bank or a solicitor stock-broker or any other person, to transact any business or do any act required to be transacted or done in the administration of the estate.

Employment of agents. 12 & 13 Geo. V, c. 16, s. 125 (1).

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

(3) The executor or administrator 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) This section applies to executors and administrators appointed either before or after the commencement of this Act.

96B. (1) Where any property forming part of an estate of a testator or intestate is in any place outside New South Wales, the executor or administrator may appoint any person to act as his agent or attorney for any of the following purposes:—

Foreign property. Ibid. s. 125 (2).

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

(b) executing or exercising any discretion trust or power vested in the executor or administrator in relation to the property.

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

(3) The executor or administrator shall not, by reason only of having made such appointment, be responsible for any loss arising thereby.

(4) This section applies to executors and administrators appointed either before or after the commencement of this Act.

96c. (1) Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, forms part of the estate of a testator or intestate the executor or administrator 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.
9 Geo. V, c. 16, s. 123

(2) This section applies notwithstanding that the executor or administrator 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 to executors and administrators appointed either before or after the commencement of this Act.

96d. (1) An executor may, in the absence of any express provision to the contrary contained in the will, appropriate any part of the residuary estate of a testator in or towards satisfaction of a legacy, or of a share in the residuary estate.

Appropriation.
cf. 60 & 61 Vic., c. 65, s. 4.

(2) The appropriation shall not be made except in the following cases, that is to say, except—

- (a) with the consent of the person entitled to the legacy, or to a share in the residuary estate; or
- (b) if the person so entitled is an infant or person of unsound mind, with the consent of his trustee guardian or committee.

(5) For the purpose of the appropriation the executor may value as prescribed by rules of court the whole or any part of the property of the testator in such manner as the executor thinks fit.

(4) Before the appropriation is effectual, notice of the intended appropriation shall be given to all persons interested in the residuary estate.

(5) Any person interested in the residuary estate may within such time as may be prescribed by rules of court apply to the Court for such order or directions as the circumstances may require.

(6)

(6) The valuation and appropriation shall be conclusive save as otherwise directed by the Court.

(7) In the case of land subject to the provisions of the Real Property Act, 1900, the Registrar-General may, on such evidence as may be prescribed by regulation under the Conveyancing Act, 1919, register the person to whom the appropriation is made as the registered proprietor of the land.

(8) In this section "executor" includes an administrator with the will annexed.

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

(3) From the commencement of the Trustee Act, 1923, this section shall not apply to a vesting on the appointment or retirement of a trustee under the provisions of that Act.

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 41 (13) 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.