

WESTERN AUSTRALIA.

# TRUSTEES ACT, 1900-1957.

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64° Victoriae No. 17.

(Affected by Acts No. 10 of 1924; No. 4 of 1926; No. 9 of 1931; No. 10 of 1931; No. 4 of 1935).

[As amended by Acts:

No. 8 of 1925 assented to 24th September, 1925;

No. 7 of 1927 assented to 29th October, 1927;

No. 38 of 1951 assented to 20th December, 1951;

No. 35 of 1955 assented to 28th November, 1955;

No. 54 of 1955 assented to 9th December, 1955;

No. 39 of 1956 assented to 18th December, 1956;

No. 15 of 1957 assented to 30th September, 1957;

and reprinted pursuant to the Amendments Incorporation Act, 1938].

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**AN ACT to consolidate and amend the law relating to Trustees.**

[Assented to 5th December, 1900.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1 This Act may be cited as the *Trustees Act, 1900-1957*, and shall come into force on the 31st December, 1900.

Short title.  
Amended by  
No. 15 of  
1957, Sec. 1.

Repeal.

2. The Acts mentioned in the Schedule are repealed, except to the extent mentioned in such Schedule.

## PART I.

3. In this Act, unless the context otherwise requires,—

- “Trustee.” “Trustee” includes a trustee whose trust arises by construction or implication of law, as well as an express trustee whose trust arises under instrument.
- “Instrument.” “Instrument” includes any deed, will, or settlement, or Act of Parliament.
- “Bankrupt.” “Bankrupt” includes a person who has arranged or compounded with his creditors.
- “Court.” “Court” means the Supreme Court.
- “Contingent right.” “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.” “Convey and conveyance,” applied to any person, includes the execution by that person of every necessary or suitable assurance for conveying, transferring, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women and tenants entail, in accordance with the provisions of the Acts for the abolition of fines and recoveries respectively.

“Devisee” includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description. “Devisee.”

“Land” includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land. “Land.”

“Mortgage and mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgage. “Mortgage and mortgagee.”

“Pay and payment” as applied in relation to stocks and securities, and in connection with the expression “into Court,” include the deposit or transfer of the same in or into Court. “Pay and payment.”

“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. “Possessed.”

“Property” includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and anything in action, and any other right or interest whether in possession or not. “Property.”

“Rights” includes estates and interests. “Rights.”

“Securities” includes stock, funds, and shares. “Securities.”

“Stock” includes fully 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 company, society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein. “Stock.”

“Transfer.”

“Transfer,” in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferrer to effect and complete the title in the transferee.

Application  
of Act.

4. (1) Unless otherwise provided, this Act shall apply to trusts created before or after the passing of this Act.

(2) Nothing herein contained shall unless otherwise expressly provided authorise a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything he is in express terms directed to do by the instrument creating the trust.

Authorised  
investments.  
Amended by  
No. 8 of 1925,  
s. 2.  
No. 38 of  
1951, s. 3;  
No. 35 of  
1955, s. 2;  
No. 54 of  
1955, s. 2;  
No. 39 of  
1956, s. 2.

5. A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say:—

(a) In any of the Parliamentary stocks, or public funds, or Government securities of the United Kingdom, or of the Commonwealth, or of any of the Australasian colonies;

(b) On mortgage of real estate in Western Australia;

(c) In debentures, or other securities charged on the funds or property of any municipality in Western Australia;

[No. 38 of  
1951, s. 3.]

(d) On fixed deposits in any incorporated or Joint Stock Bank carrying on business in Western Australia; or any incorporated building society now or hereafter carrying on business in Western Australia, and certified by notice in the *Gazette*, signed by the Treasurer, as a society in the shares of which trustees may invest;

- (e) In any security, or manner authorised by any Act heretofore in force and not hereby repealed;
- (f) In the debenture or stock of any company now or hereafter carrying on business in Western Australia, and certified by notice in the *Gazette*, signed by the Treasurer, as a company in the stock of which trustees may invest; [No. 38 of 1951, s. 3.]
- (g) In 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, and may also from time to time vary any such investment.
- (h) in any security in respect of which repayment of the amount secured and payment of interest thereon is guaranteed by the Parliament of the United Kingdom or the Commonwealth or the State or any of the other States of the Commonwealth or of New Zealand; Cf. the Trustees Act, 1898, as amended, of Queensland, s. 5 (1) (IV.) and "The Trustees and Executors Act of 1897," as amended, of Tasmania, s. 4 (d).  
[No. 38 of 1951, s. 3.]
- (i) in the shares of any incorporated building society now or hereafter carrying on business in Western Australia, and certified by notice in the *Gazette*, signed by the Treasurer, as a society in the shares of which trustees may invest; [No. 38 of 1951, s. 3.]
- (j) with the approval of the Court and on such terms and conditions as the Court thinks fit, in the purchase of real estate for the purpose of providing a home for any beneficiary under the trust; [No. 35 of 1955, s. 2.]
- (k) in debentures or other securities which are charged upon the property and revenue of the West Australian Fire Brigades Board constituted under the Fire Brigades Act, 1942,<sup>1</sup> and which are certified by notice Cf. No. 35 of 1942, ss. 6 and 46 (3).  
[No. 54 of 1955, s. 2.]  
[No. 39 of 1956, s. 2.]

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<sup>1</sup> Now Fire Brigades Act, 1942-1959.

signed by the Treasurer and published in the *Gazette*, as debentures or securities in which trustees may invest;

[No. 39 of 1956, s. 2.]

(l) on deposit in the Savings Bank Division of the Rural and Industries Bank of Western Australia;

Of Commonwealth Act No. 14 of 1945, Pt. II, Div. 1.  
[No. 39 of 1956, s. 2.]

(m) on deposit in any savings bank authorised to carry on savings bank business under the Banking Act, 1945<sup>1</sup> of the Commonwealth Parliament or under any Act passed in amendment of or substitution for that Act.

Purchase at a premium of redeemable stock,

6. A trustee may invest in any of the securities hereinbefore mentioned or referred to, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

Retention of redeemable stock.

7. A trustee may retain, until redemption, any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act or the instrument creating the trust.

Discretion of trustees.

8. Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument, if any, creating the trust.

Enlargement of express power of investment,

9. (1) A trustee having power to invest in real securities, or on mortgage of real estate, may invest, and shall be deemed to have always had power to invest, on mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of more than a nominal rent, or to any condition for re-entry, except for non-payment of rent.

<sup>1</sup> See now Banking Act, 1959.

(2) A trustee having power to invest in the mortgages, stocks, or bonds of any company may invest in the debentures or debenture stock of any such company.

10. (1) A trustee lending money on any security 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—

Loans and investments by trustees not chargeable as breaches of trust.

- (a) That, in making the loan, the trustee was acting upon a valuation of the property made by a person instructed and employed independently of any owner of the property, and whom he reasonably believed to be a competent valuer; and
- (b) That the amount of the loan does not exceed two-thirds of the value of the property as stated by such valuer; and
- (c) That the loan was made under the advice of the valuer expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed, whether wholly or partly, with the production or investigation of the lessor's title.

Dispensing with lessor's title.

(3) A trustee shall not be chargeable with the breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property, he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, 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 short title.

Application  
to existing  
securities.

(4) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto at the commencement of this Act.

Liability or  
loss by  
reason of  
improper  
investments.

11. (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the 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.

(2) This section applies to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto at the commencement of this Act.

Trustee  
liable for  
negligence  
only.

12. In the discharge of all duties, as well as in the exercise of all discretions implied by or expressly cast upon a trustee, he shall exercise and be alone responsible for the want of due care and diligence.

Trustee may  
plead  
Statute of  
Limitations  
in certain  
cases.

13. (1) In any action or proceeding against a trustee, or any person claiming through him, or in reference to any trust, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was a party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his own use, the following provisions shall apply:—

- (a) All rights and privileges conferred by any Statute of Limitations shall be enjoyed in the like manner and to the like extent as would have been the case if the trustee or person claiming through him had not been a trustee or person claiming through him.



- (b) If the action or proceeding is one to which no existing Statute of Limitations could be pleaded under the preceding sub-section, the trustee or person claiming through him shall be entitled to the benefit and be at liberty to plead the lapse of time as a bar in the like manner and to the like extent as if the claim had been against him (otherwise than as a trustee or person claiming through a trustee) in an action of debt for money had and received.
- (c) The Statute or bar by lapse of time shall run against a married woman entitled in possession to her separate use, whether with or without a restraint upon anticipation; but shall not begin to run against any beneficiary until the interest of such beneficiary shall be an interest in possession.

(2) 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 order obtained by another beneficiary than he could have obtained if he had brought such action or proceeding and this section had been pleaded.

(3) This and the immediately preceding section extends to an executor or administrator, who for such purposes shall be included in the term trustee.

14. A trustee or an executor or administrator shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law.

Not liable for continuing to hold investment.

PART II.—VARIOUS POWERS AND DUTIES OF TRUSTEES.

*Appointment of New Trustees.*

15. (1) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead or remains out of the Colony for

Power of appointing new trustees.

more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, and residing in the Colony, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the Colony, desiring to be discharged, refusing, or being unfit, or being incapable as aforesaid.

**Effect of  
appointment.**

(2) On the appointment of a new trustee for the whole or any part of trust property—

- (a) The number of trustees may be increased; and
- (b) A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or if only one trustee was originally appointed, then one separate trustee may be so appointed, for the first-mentioned part; and
- (c) 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; but, 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 to perform the trust; and

- (d) Any assurance 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.

(3) Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance 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.

(4) 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; and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the provisions of this section.

(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 any provisions therein contained.

16. (1) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees by deed consent to, or the Court or a Judge authorises, the discharge of the trustee and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, upon passing his accounts before the Master, be discharged therefrom under this Act without any new trustee being appointed in his place.

*Retirement  
of trustee.*

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(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 any provisions therein contained.

Vesting of trust property in new or continuing trustees.

17. (1) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed shall become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants and for the purposes of the trust, that estate, interest, or right.

(2) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3) This section does not extend to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament.

(4) For purposes of registration of the deed, the person or persons making the declaration shall be deemed the conveying or transferring party or parties, and the conveyance or transfer shall be deemed to be made by him or them under a power

conferred by this Act, and the declaration upon registration be deemed, and operate as a transfer under the Transfer of Land Act, 1893,<sup>1</sup> or a conveyance, as the case may be.

*Purchase and Sale.*

18. Where a trust for sale, or a power of sale of property is vested in a trustee, he may sell, or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots by public auction or private contract, subject to any such conditions respecting title or evidence of title or other matter, as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction or to rescind any contract for sale, and to resell without being answerable for any loss.

Power to sell  
by auction,  
etc.

19. (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

Sale subject  
to depreciatory  
conditions.

(2) No sale made by a trustee shall, after the execution of the contract of purchase and sale, or the conveyance or transfer, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser upon any sale made by a trustee shall be at liberty to make any objection against the title upon the ground aforesaid.

<sup>1</sup> Now Transfer of Land Act, 1893-1959.

Power to  
sell under  
42 Vict., 10.

20. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section two of the Vendor and Purchaser Act, 1878.<sup>1</sup>

Married  
woman  
as bare  
trustee may  
transfer.

21. When any land or hereditament is vested in a married woman as a bare trustee, she may transfer, convey, or surrender it as if she were a *femme sole*.

*Various Powers and Liabilities.*

Power to  
authorise  
solicitor to  
receive  
money,

22. (1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration, or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of and to produce any deed signed by the trustee and containing a receipt; and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such deed by the solicitor shall be a sufficient authority to receive the money consideration or property, as the case may be.

or banker.

(2) A trustee may appoint a banker or solicitor to be his agent to receive and give discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance, with a receipt signed by the trustee; and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this section had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor (as

<sup>1</sup> Amended by 43 Vict. No. 3, 1879.

the case may be) to pay, or transfer the same to the trustees.

(4) This section applies only where the money or valuable consideration or property is received after the passing of this Act.

23. (1) A trustee may insure against loss or damage by fire any building or other insurable property, including rent to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof, or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income. Power to insure.

(2) A trustee may lease or let any real estate for any term not exceeding seven years at such rent and on such terms and conditions as the trustee thinks fit, and may accept surrender leases. Power to let.

24. (1) A trustee of any leaseholds for lives or years which are renewable under any covenant or contract or otherwise may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the agreed or reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite: Provided that where, by the terms of the settlement or will, the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew, or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee. Power to renew leases.

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

Power of trustee to give receipts.

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

Power for trustees to compound, etc.

26. 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 he or they may think fit, accept any composition, or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the trusts, and for any of those purposes may 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.



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

Powers of two or more trustees.

28. 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 or suffered some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

Exoneration of trustees in cases of powers of attorney.

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

29. A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of his trusts or powers.

Implied indemnity of trustees.

### PART III.—POWERS OF THE COURT.

#### *Appointment of New Trustees and Vesting Orders.*

30. (1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to

Power of Court to appoint new trustees.

do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular, and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who desires to be discharged, or is convicted of felony or misdemeanour, or is bankrupt or insolvent.

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

**Vesting  
orders as  
to land.**

31. In any of the following cases, namely:—

- (1) Where the Court appoints, or has appointed, a new trustee; and
- (2) Where a trustee, entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly, with any other person—
  - (a) Is an infant; or
  - (b) Is out of the jurisdiction of the Court; or
  - (c) Cannot be found; and
- (3) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; and
- (4) Where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead; and

- (5) Where there is no heir or personal representative to a trustee who was entitled to or possessed of land, and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; and
- (6) Where a trustee, jointly or solely entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement,

the Court may make an order (in this Act called a vesting order) vesting the land in any such person, in any such manner, and for any such estate as the Court may direct or releasing or disposing of the contingent right to such person as the Court may direct.

Provided that—

- (a) Where the order is consequential on the appointment of a new trustee, the land shall be vested for such estate as the Court may direct in the persons who, on the appointment, are the trustees; and
- (b) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the Supreme Court or cannot be found, the land or right shall be vested in such other person either alone or with some other person.

32. Where any land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence, would, in respect

Orders as to  
contingent  
rights of  
unborn  
persons.

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

**Vesting order in case of infant mortgagee.**

33. Where any person entitled to or possessed of land, or entitled to a contingent right in the land by way of security for money, is an infant, the Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee.

**Vesting order where mortgagee dies without discharging land.**

34. Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits hereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to any order for the reconveyance of the land or discharge or mortgage, then the Court may make an order vesting the land in such person or persons, in such manner and for such estate as the Court may direct in any of the following cases, namely:—

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

- (c) Where it is uncertain which of several devisees of the mortgagee was the survivor; and
- (d) Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee whether he is living or dead; and
- (e) Where there is no heir or personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain which he is, heir or personal representative or devisee.

35. Where the Court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made, or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act, and the Court may if it thinks expedient, make an order vesting the land, or any part thereof for such estate as that Court thinks fit, in the purchaser or mortgagee or in any other person.

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

36. Where a judgment is given for the specific performance of a contract concerning any land, or for the partition or sale in lieu of partition or exchange of any land, or generally where any judgment is given for the conveyance or transfer of any land, either in cases arising out of the doctrine of election or otherwise, the Court may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of the unborn persons who might claim under any property to the action or under the will or voluntary settlement of any person deceased who was during his lifetime,

Vesting order in case of specific performance.

a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act; and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting order.

37. A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who, before the appointment, were the trustees (if any) had duly executed all proper conveyances or transfers of the land for such estate as the Court directs; or if there is no such person or no such person of full capacity, then as if such a person had existed and been of full capacity and had duly executed all proper conveyances or transfers of the land for such estate as the Court directs, and shall, in every other case, have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectfully relate had been an ascertained and existing person of full capacity, and had executed a conveyance, transfer, or release to the effect intended by the order.

Power to appoint a person to convey.

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

Vesting orders as to stock and choses in action.

39. (1) In any of the following cases, namely:—
- (i) Where the Court appoints or has appointed a new trustee; and
  - (ii) Where a trustee entitled alone or jointly with another person to stock or to a chose in action—

- (a) Is an infant; or
  - (b) Is out of the jurisdiction of the Court; or
  - (c) Cannot be found; or
  - (d) Neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto, for twenty-eight days next after a request in writing has been made to him by the person so entitled; or
  - (e) Neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty-eight days next after an order of the Court for that purpose has been served on him; or
- (iii) Where it is uncertain whether a trustee, entitled alone or jointly with another person to stock or to a chose in action, is alive or dead,

the Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action in any such person as the Court may appoint:

Provided that where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.

(2) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself or any other person, according to the order, and all companies and persons shall obey every order under this section according to its tenor.

(4) After notice in writing of an order under this section, it shall not be lawful for any company or person to transfer any stock to which the order relates, or to pay any dividends thereon, except in accordance with the order.

(5) The Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

New trustee  
may be  
appointed  
on applica-  
tion of a  
beneficiary.

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

(2) An order under this Act concerning any land, stock, or chose in action 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.



41. Every trustee appointed by a Court of competent jurisdiction shall, as well before as after the trust property becomes, by law or by assurance or otherwise, 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.

Power of trustee appointed by the Court.

42. The Court may order the costs and expenses of and incident to any application under this Act, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner or by such persons as to the Court may seem just.

Power to charge costs on trust estate.

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

Trustees of societies.

44. Where a vesting order is made as to the land under this Act or any Act relating to lunacy, founded on an allegation of the personal incapacity of a trustee or mortgagee, or an allegation that a trustee or the other personal representative or devisee of a mortgagee is out of the jurisdiction of the Court, or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee, or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate, without an heir, or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter

Orders in certain cases to be conclusive evidence.

so alleged, in any Court, upon any question as to the validity of the order; but this section shall not prevent the Court from directing a reconveyance, or the payment of costs occasioned by any such order, if improperly obtained.

Court may make any order in connection with estates. Amended by No. 7 of 1927, s. 2, No. 35 of 1955, s. 3.

45. (1) The Court may, on the application of any trustee, make such orders as to it may seem meet in all or any of the following matters:—

- (i) The improvement or repair of any part of the trust estate.
- (ii) The conduct and management of any business forming part of the trust estate.
- (iii) The leasing for any term of any part of the trust estate.
- (iv) The sale or exchange or mortgage of any part of the trust estate.
- (v) The purchase of any land for the protection or improvement of the trust estate.
- (vi) All questions arising in connection with the administration of the trust, the control or management of the trust estate, and the construction of the instrument creating the trusts, including the rights of all beneficiaries under the trust.
- (vii) The varying from time to time of the amount of any payment (whether by way of annuity or otherwise) being made periodically to any beneficiary, where the Court is of opinion, having regard to all the circumstances of the case, that it is just and equitable that the amount be varied.

[No. 35 of 1955, s. 3.]

(2) The Court may by any order direct the manner in which all moneys necessary for any of the purposes, or incurred in connection with any application aforesaid, shall be raised and paid, and

the person or class of persons against whose interest such moneys shall be charged.

(3) Any order may be made under this section notwithstanding anything to the contrary contained or expressed in the instrument creating the trust: Provided that such order is, in the opinion of the Court, beneficial, having regard to the estate and all persons or the majority of persons interested therein.

(4) Subject to the proviso to the last preceding subsection, and to section seventeen of the Administration Act, 1903,<sup>1</sup> an order may be made under this section on the application of an executor to whom probate has been granted, or the administrator of the estate of a deceased person; and in such case where reference is made in this section to the trust estate, it shall extend and apply to the estate of the testator or intestate, notwithstanding that such estate may not have been cleared by the payment of debts.

Interpretation of "Trust." Cf. 56 and 57 Vic., c. 53, s. 50 (Imp). [No. 7 of 1927, s. 2.]

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

Payment into Court by trustees.

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

(3) Where any moneys 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 payment into Court may, with the consent of the Court, be made by the majority without the concurrence of the other or others; and where any such money or securities are deposited with any

<sup>1</sup> Now Administration Act, 1903-1959.

banker, broker, or other depository, the Court may order payment or delivery of the moneys or securities to the majority of the trustees, for the purpose of payment into Court; and every transfer, payment, and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all persons entitled to the moneys and securities so transferred, paid, or delivered.

*Miscellaneous.*

Power to  
make order  
in absence  
of parties.

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

(2) Where any party to an action or proceedings is not within the jurisdiction, or is not *sui juris*, or cannot be found, the Court may appoint some person to represent such party, or may proceed in the absence of such party; and all orders made shall be as binding on such party as if personally present and *sui juris*.

Power to  
sell land  
apart from  
minerals.

48. (1) Where a trustee or other person is, for the time being, authorised to dispose of land by way of sale, exchange, or partition, he may so dispose thereof, with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the minerals, or so disposing of the minerals with or without the said rights or powers separately from the residue of the land.

(2) Nothing in this section shall derogate from any power which a trustee may have under the Settled Land Act, 1892,<sup>1</sup> or otherwise.

49. (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 shall, notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Beneficiary to indemnify trustee.

(2) This section shall apply to breaches of trust committed as well before as after the passing of this Act, but shall not apply so as to prejudice any question in an action or other proceeding which is pending at the commencement of this Act.

50. (1) All powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of the Settled Land Act, 1892,<sup>1</sup> whether appointed by the Court or by the settlement, or under provisions contained in the settlement.

Application of Act to Settled Land Act, 1892.

(2) This section applies and is to have effect with respect to an appointment, or a discharge, and retirement of trustees taking place before as well as after the commencement of this Act.

(3) This section is not to render invalid, or prejudice any appointment or any discharge and retirement of trustees effected before the passing of this Act.

51. Property vested in any person on any trust, or by way of mortgage, shall not, in case of that

Trusts estates not affected by conviction.

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<sup>1</sup> Amended by No. 49 of 1909.

person becoming a convict within the meaning of the Imperial Act 33 and 34 Victoria 23, as adopted by the 37 Victoria 8,<sup>3</sup> vest in any such administrator as may be appointed under that Act, but shall remain in the trustee or mortgagee, or survive to his co-trustee, or descend to his representative, as if he had not become a convict: Provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

**Indemnity.**

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

**Trustee's power of delegation.**

53. (1) A trustee who, for the time being, resides out of Western Australia, or is about to so reside temporarily or otherwise, may, if not expressly prohibited by the instrument creating the trust, by power of attorney, under seal, delegate to any person or persons residing in Western Australia, all or any of the powers, authorities, and discretions vested in such trustee.

(2) Every deed, act, matter, and thing executed, done, and performed by such attorney or attorneys shall be as valid and effectual as if executed, done, and performed by the trustee.

**Trustee's Bank Account.**

54. Trustees may, by written notice signed by them, authorise any Bank to honour cheques, bills, and drafts drawn upon the banking account of the trust by any one or more of such trustees, and until such authority is cancelled by written notice to the Bank, the latter shall be entitled to pay all cheques, bills, and drafts so drawn.

<sup>3</sup> Repealed by s. 30 of Criminal Code Amendment Act, 1913 (No. 15 of 1913).

54A. Trustees may by written notice signed by them authorise any Savings Bank to pay money out of any account of the trust in the Savings Bank on presentation of withdrawal forms signed in the manner specified in the written notice, and until that authority is cancelled by written notice signed by the trustees and given to the Savings Bank, the Savings Bank is entitled to pay moneys out of the account on presentation of withdrawal forms so signed.

Trustee's  
Savings  
Bank  
Accounts.  
S. 54A  
added by  
No. 15 of  
1957, s. 2.

## THE SCHEDULE.

Act.	Extent of Repeal.
22 and 23 Victoria, Cap. 35 (Imperial). Adopted by 31 Victoria, No. 8	Sections 26, 30, 31 and 32.
23 and 24 Victoria, Cap. 38 (Imperial). Adopted by 31 Victoria, No. 8	The whole, except Sections 6, 7 and 8.
23 and 24 Victoria, Cap. 145 (Imperial). Adopted by 31 Victoria, No. 8	Sections 8 and 9.
53 Victoria, No. 14 ....	The whole.
59 Victoria, No. 28 ....	The whole.