

THE TRUSTEE ACT

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THE TRUSTEE ACT

Cap. 393.

[1st January, 1897.]

1. This Act may be cited as the Trustee Act.

Short title.

Interpretation

2. In this Act—

Interpreta-
tion.

“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 by that person of every necessary or suitable assurance for conveying, 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;

“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;

“instrument” includes enactments of the United Kingdom Parliament or of the Legislature of Jamaica;

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

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- “mortgage” and “mortgagee” include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;
- “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;
- “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;
- “property” includes real and personal property, and any estate and interest in any property, real or personal, and any debt, or any thing in action, and any other right or interest, whether in possession or not;
- “rights” includes estates and interests;
- “securities” includes stocks, funds and shares;
- “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 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 exclusion 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 the expressions “trust” and “trustee” include 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 personal representative of a deceased person.

PART I. Investments

3. A trustee may, unless expressly forbidden by the instrument (if any) creating the trust, 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— Authorized investments.

(a) in any investment authorized by any Act of Parliament of the United Kingdom;

(b) in any securities, the interest of which is for the time guaranteed by any enactment of this Island or the Government of this Island;

(c) on real securities in this Island, and may also from time to time vary any such investment.

4. Every power conferred by section 3, 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. Discretion of trustees.

5. Sections 3 and 4 shall apply as well to trusts created before as to trusts created after the first day of January, 1897, and the powers thereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust. Application of preceding sections.

6. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment authorized by the instrument of trust or by the general law. Liability of trustee.

Enlargement
of express
powers of
investment.

7. A trustee having power to invest in real securities unless expressly forbidden by the instrument creating the trust, may invest and shall be deemed to have always had power to invest upon mortgage of property held for an unexpired term of not less than two hundred years, and not subject to any reservation of rent greater than ten cents a year, or to any right of redemption, or to any conditions for re-entry, except for non-payment of rent.

Loans and
investments
by trustees
not charge-
able as
breaches of
trust.

8.—(1) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the Court that in making the loan the trustee was acting upon a report as to the value of the property made as hereinafter provided, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in such report, and that the loan was made under the advice expressed in the report. This section shall apply to a loan upon any property of any tenure whether agricultural or house or other property on which the trustee can lawfully lend:

Provided that the trustee shall have procured to be made for him a report as to the value of such property—

- (a) in the case of agricultural property by an agriculturist; and
- (b) in the case of other property, and property consisting of buildings, apart from buildings on and connected with agricultural property, of an able practical builder, valuer, or other experienced person,

such agriculturist, builder, valuer, or other experienced person shall be instructed and employed independently of

any owner of the property, and may or may not be a person carrying on his business in the locality where the property is situated.

(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 either wholly or partly with the production or investigation of the lessor's title.

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

9. 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 authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

Liability for loss by reason of improper investments.

PART II. *Various Powers and Duties of Trustees*
Appointment of New Trustees

10.—(1) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of this Island for 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

Power of appointing new trustees.

TRUSTEE

new trustees by the instrument, if any, creating the trust, or if there is no other person, or no such person able and willing to act, 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 this Island, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid.

(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.

(6) Every appointment made under this section shall be recorded in the Record Office, or in the office of the Registrar of Titles as to property registered under the Registration of Titles Act of this Island.

11.—(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 empowered to appoint trustees by deed consent to 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

Retirement
of trustee.

to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(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.

(4) Every such deed or assurance made under this section, and every order of court appointing a new trustee, shall be recorded in the Record Office, or in the office of the Registrar of Titles as to property registered under the Registration of Titles Act of this Island.

Vesting
trust
property in
new or
continuing
trustees.

12.—(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 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 con-

tinuing 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 land conveyed by way of mortgage for securing money subject to the trust, or 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 any Statute of Parliament of the United Kingdom or of this Island

(4) For purposes of registration of the deed in the Record Office, or in the office of the Registrar of Titles, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5) This section applies only to deeds executed after the 30th day of November, 1889.

Purchase and Sale

13.—(1) 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 by 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.

Exercise of trusts and powers of sale.

(2) 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.

(3) This section applies only to a trust or power created by an instrument coming into operation after the thirtieth day of November, 1889.

Power to sell subject to depreciatory conditions.

14.—(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.

(2) No sale made by a trustee shall, after the execution of the conveyance, 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.

Power to sell under Vendors and Purchasers Act.

15. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 3 of the Vendors and Purchasers Act which provides rules for regulating obligations and rights of vendors and purchasers.

Various Powers and Liabilities

Power to authorize receipt of money by banker or solicitor.

16.—(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, a deed containing any such receipt as is referred to in section 57 of the Conveyancing Act, which provides that a receipt for

consideration of money or securities shall be a sufficient discharge; 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 have the same validity and effect under the said section as if the person appointing the solicitor had not been a trustee.

(2) A trustee may appoint a banker or solicitor to be his agent to receive and give a 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 Act 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 the case may be) to pay or transfer the same to the trustee.

(4) Nothing in this section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit anything which he is in express terms directed to do, by the instrument creating the trust.

17.—(1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the

Power to
insure
building.

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.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

Power of trustees of renewable leaseholds to renew.

18.—(1) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may, 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 accustomed and 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 obligation to renew or to contribute to the expenses 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 trustees.

(2) If money is required to pay for the renewal, the trustee affecting 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.

19. Nothing in sections 17 and 18 shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Sections 17 and 18 not to authorize anything forbidden by trust instrument.

20. 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 in writing of trustee sufficient discharge.

21.—(1) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

Power for executors and trustees to compound, etc.

(2) An executor or administrator, or two or more trustees, acting together, or a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorized 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 of any debt, and may compromise, compound, abandon, submit to arbitration,

or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, 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.

(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.

Power of
two or more
trustees.

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

(2) This section applies only to trusts constituted after or created by instruments coming into operation after the thirtieth day of November, 1889.

Exoneration
of trustees
in respect
of certain
powers of
attorney.

23. 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 has 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:

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

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

24. 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 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 trust or powers.

Implied
indemnity
of trustees.

PART III. *Powers of the Court*

Appointment of New Trustees and Vesting Orders

25.—(1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

Power of the
Court to
appoint new
trustees.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or

continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

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

Vesting
order as to
land.

26. In any of the following cases, namely—

- (a) where the Court appoints or has appointed a new trustee; and
- (b) 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—
 - (i) is an infant; or
 - (ii) is out of the jurisdiction of the Court; or
 - (iii) cannot be found; and
- (c) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; and
- (d) 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
- (e) 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
- (f) where a trustee jointly or solely entitled to or possessed of any land, or 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—

- (i) 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
- (ii) where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

27. 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 thereof, become entitled to or possessed of the lands on any trust, the Supreme Court may make an order relieving 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.

Order as to
contingent
rights of
unborn
persons.

Vesting
order in
place of
conveyance
by an infant
mortgagee.

28. Where any person entitled to or possessed of land, or entitled to a contingent right in 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 in
place of
conveyance
by heir, etc.,
or personal
representa-
tive of
mortgagee.

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

- (a) where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the Supreme 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 has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled; and
- (c) where it is uncertain which of several devisees of the mortgagee was the survivor; and
- (d) where it is uncertain as to the survivor of several devisees of the mortgagee or as to the 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 who is his heir or personal representative or devisee.

30. Where any 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, as heir, or under the will of a deceased person for payment of whose debts a judgment was given or order made, 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.

31. 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 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 unborn persons who might claim under any party to the action, 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 judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and

Vesting order consequential on judgment for specific performance, etc.

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.

32. A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the 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 person had existed and been of full capacity and had duly executed all proper conveyances 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 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.

Power to appoint person to convey.

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

Vesting orders as to stock and choses in action.

34.—(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, 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—

- (a) 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
 - (b) 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 banks and all other 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 bank or any other 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 Statutes relating to merchant shipping as if they were stock.

Persons
entitled to
apply for
orders.

35.—(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.

36. Every application to the Court under this Act shall be by petition or by summons at Chambers.

Applications to the Court to be by petition or summons.

37. 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.

Powers of new trustee appointed by court.

38. The Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, 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 and by such persons as to the Court may seem just.

Power to charge costs on trust estate.

39. 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 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 charities.

40. Where a vesting order is made as to any land under this Act, or under any law relating to lunacy in Jamaica, founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or 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

Order made upon certain allegations to be conclusive evidence.

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 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.

Trustee or executor may apply to the Court for an opinion, advice, etc.

41. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply to the Court for an opinion, advice, or direction on any question respecting the management or administration of the trust money or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by all persons interested in such application, or such of them as the Court shall think expedient; and the trustee, executor, or administrator acting upon the opinion, advice, or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject matter of the said application:

Provided nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction, and the costs of such application as aforesaid shall be in the discretion of the Court.

42. Where any such application shall be made under the provisions of section 41, the Judge of the Court may require the petitioner to attend him by counsel either in Chambers or in Court, where he deems it necessary to have the assistance of counsel.

As to form of application.

43.—(1) Where in the management or administration of any property vested in trustees, whether or not such trustees are trustees of the settlement for the purposes of the Settled Land Act, any sale, lease, mortgage, surrender, release or other disposition or any purchase, investment, acquisition, expenditure or other transaction is, in the opinion of the Court, expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court 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, if any, as the Court may think fit and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

Power of the Court to authorize dealings with trust property.

(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.

Relief for Breach of Trust

44. If it appears to the Court that a trustee whether appointed by the Court or not, is or may be personally liable for any breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the breach

Power of the Court in case of a breach of trust.

of trust, and for omitting to obtain the directions of the Court in the matter in which he committed such breach then the Court may relieve the trustee either wholly or partly from personal liability for the same.

Extent of relief for application of section 44.

45. The provisions of section 44 shall apply as well to trusts created before as to trusts created after the first day of October, 1925, and the relief hereby proposed to be given or conferred shall be in addition to such as may be given or conferred by the law or instrument, if any, creating the trust.

Plea of Statute of Limitations

Statute of limitations may be pleaded by trustees.

46.—(1) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee, or previously received by the trustee, and converted to his use, 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 they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him;
- (b) if the action or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner, and to the like extent, as if the claim had been against

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

(2) No beneficiary as against whom there would be a 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 other proceeding, and this section had been pleaded.

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

(4) In this section the expression "trustee" shall be deemed to include an executor or administrator, and a trustee whose trust arises by construction or implication of law as well as an express trustee, and the person for the time being executing the office of Administrator-General of Jamaica as constituted by law.

Payment into Court by Trustees

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

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

(3) Where any 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 Court may order the payment into court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker 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 the persons entitled to the moneys and securities so transferred, paid, or delivered.

Miscellaneous

Power to give judgment in absence of trustee.

48. Where in any action the Court is satisfied that diligent search has been made for any person, who in the character of trustee is made a defendant in any action to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action 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 in the action, 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 the action in any other character.

Power to sanction sale of land or minerals separately.

49.—(1) Where a trustee or other person is for the time being authorized to dispose of land by way of sale, exchange, partition or enfranchisement, the Court may sanction his so disposing of the land with an exception or reservation of any minerals, or so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land.

(2) Any such trustee or other person, with the said sanction previously obtained, may unless forbidden by the instrument creating the trust or direction, from time to time, without any further application to the Court, so dispose of any such land or minerals.

(3) Nothing in this section shall derogate from the power which a trustee may have under the Settled Land Act or otherwise.

50.—(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, make such order as to the Court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Power to make beneficiary indemnify for breach of trust.

(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 pending on the first day of January, 1897.

51.—(1) In this Act “the Court” shall mean the Supreme Court and also a Resident Magistrate’s Court where that Court has jurisdiction.

Meaning of “the Court”.

(2) The procedure in the Resident Magistrate’s Court under this Act shall be in accordance with the enactments and rules regulating the procedure of those Courts.

PART IV. *Miscellaneous and Supplemental*

Application to trustees under Settled Land Act of provisions as to appointment of trustee.

52.—(1) All the 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, whether appointed by the Court or by the settlement, or under the provisions contained in the settlement.

(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 first day of January, 1897.

(3) This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees effected before the first day of January, 1897, otherwise than under the provisions of the Conveyancing Act.

Trust estates not affected by trustee becoming a convict.

53. Property vested in any person on any trust or by way of mortgage shall in case of that person being sentenced to death or penal servitude by a court of competent jurisdiction remain (subject to the provisions hereinbefore contained) 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.

54. 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 enquire concerning the propriety of the order, or whether the Court by which it was made had jurisdiction to make the same.