

Act No. 98, 1902.

TRUSTEE ACT
AMENDMENT.

An Act to amend the law relating to trustees and trust property. [12th December, 1902.]

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

Short title and operation.

1. This Act may be cited as the "Trustee Act Amendment Act, 1902," and shall be read with the Trustee Act, 1898, hereinafter called the Principal Act, and its provisions shall apply to all deeds, wills, acts, or other instruments or trusts executed, passed, or created, as well before as after the passing of this Act, unless a contrary intention is expressed therein.

PART I.

Investments by trustees.

Accepting a short title.
56 and 57 Vic., c. 53,
s. 8 (3).

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

Loss by reason of lending too much on authorised security.
Ibid. s. 9.

3. Where a trustee improperly advances trust money on a mortgage security which would at the time of investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

To apply to existing securities and investments.

4. This part of this Act 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 a suit or other proceeding has been instituted with reference thereto before the commencement of this Act and is still pending.

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PART II.

Appointment and retirement of trustees.

5. (1) Where there are more than two trustees, if one of them by registered 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, consent by the same or other registered deed 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 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.

Retirement of trustees.
56 and 57 Vic. c. 53,
s. 11.

(2) Upon the discharge of such trustee all the trust property both real and personal which is jointly vested in the continuing and retiring trustees shall, save as hereinafter mentioned, by virtue of the execution and registration of the said deed and without other assurance in the law be divested from the retiring trustee and be conveyed, assigned, and transferred to and be legally vested in the continuing trustees alone, who shall be entitled to sue for and recover and to call for a transfer to them of all debts and choses in action subject to the trusts :

Provided that where any portion of the trust property is subject to the provisions of the Mining Acts, the Crown Lands Acts, or the Real Property Act, 1900, the necessary and appropriate transfers shall be executed and registered so as to transfer such property to the continuing trustees alone, and until such transfers are so executed and registered the retiring trustee shall not be discharged from the trusts in respect of such portion of the trust property.

(3) Two or more trustees may retire concurrently under this section provided there be left at least two continuing trustees to perform the trust.

6. The provisions relating to the appointment of new trustees by the last retiring trustee in section six of the Principal Act shall be deemed to authorise and to have authorised all the trustees or the last two or more trustees of any trust to retire concurrently and appoint new trustees in their place.

Interpretation of section six of the Trustee Act, 1898.

7. Notwithstanding anything contained in the Perpetual Trustee Company (Limited) Act or the Permanent Trustee Company (Limited) Act it shall not be necessary to advertise in any newspaper notice of any application for the appointment or the consent of the Chief Judge in Equity to the appointment of either of the said companies as trustees where all persons beneficially interested are before the Court or have had notice of the intended application to the Court or Judge, and in any such case in which the Court or a Judge in Equity directs any reference to the Master in Equity to appoint a new trustee

Advertisements of proposed appointment of trustee companies.

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trustee either of the said companies may be appointed by the Master in the same way as any other trustee may be appointed without the necessity for any reference back to the Court.

Court may sanction retirement of trustee without appointment of a successor.

8. The power to appoint new trustees and to make vesting orders contained in the Principal Act shall be deemed to authorise and to have authorised the Court, upon the retirement of one or more of a number of trustees, to reappoint the continuing trustees alone as new trustees, and whether such reappointment is made or not to make a vesting order of the trust property in such continuing trustees alone.

PART III.

Relief from breaches of trust.

Trustees, executors, and administrators may be relieved from breaches of trust.

59 and 60 Vic., c. 35, s. 3.

9. (1) If it appears to the Court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the direction of the Court in the matter in which he committed such breach, then the Court may relieve the trustee either wholly or partly from personal liability for the same.

(2) In this section the term "trustee" shall include executors and administrators, and in the case of executors and administrators the powers of the Court may be exercised by the Supreme Court in its probate jurisdiction as well as in Equity.

PART IV.

Improvements of trust property.

The Court may sanction improvements of trust property.

10. (1) Where any leasehold or freehold lands are vested in trustees in trust for any infant, or in trust for any persons in succession, the Court may order that the trustees be at liberty to expend a sum to be named in such order—

- (a) in effecting such repairs to any existing buildings, dams, fences, or other erections upon the lands; or
- (b) in effecting such improvements of or upon the lands, or such reconstruction, enlargement, or improvement of any existing buildings, dams, fences, or other erections thereon; or
- (c) in erecting new buildings, dams, fences, or other erections upon the lands,

as the Court may think expedient, having due regard to the interest of all persons beneficially interested therein, although the proposed expenditure may not be necessary for the purpose of salvage of the property.

(2)

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(2) The Court may authorise the trustees to raise the moneys Money, how raised. so authorised to be expended by mortgage of such lands, or sale of a part thereof, or by mortgage or sale of any other real or personal property held by the trustees upon the same trusts, or to pay the said moneys out of any moneys under the control of the trustees and held by them upon the same trusts, or to provide the said moneys partly in one and partly in another of the said modes, as to the Court seems fit.

(3) When the money required is authorised to be raised by mortgage the Court may give directions to the trustees how the principal and interest are to be paid, and may require a sinking fund to be provided for so as to enable any such mortgage to be paid off at any stated period according to the nature of the object for which the money is required, and in every case the Court shall give such directions as appear necessary and proper, so as to throw upon the respective interests of the persons beneficially interested their proper proportion of the moneys to be expended, and in any case where money is authorised to be expended upon leasehold lands such direction may include provision for a sinking fund. Directions for adjustment of rights of parties.

(4) No purchaser or mortgagee paying or advancing money upon any sale or mortgage authorised by the Court under this section shall be required to see to the application of the purchase money or mortgage money. Purchaser not bound to inquire.

(5) Applications to the Court under this section may be made by originating summons, and the rules and practice of the Court from time to time applying to the practice upon originating summons shall apply to applications hereunder. Procedure.

(6) In this section the word "trustees" includes executors and administrators.