

New Zealand.



ANALYSIS

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1899, No. 24.

Title.

AN ACT to amend "The Trustee Act, 1883."

[24th October, 1899.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act is "The Trustee Act Amendment Act, 1899," and it shall form part of and be read together with "The Trustee Act, 1883."

Act extended to executors and administrators.
Repeal.

2. All reference in this Act to trustees shall extend to and include executors and administrators.

3. Sections eighty-four to eighty-eight of "The Trustee Act, 1883," are hereby repealed.

Non-resident trustees may delegate certain powers.

4. Any trustee of real or personal property in New Zealand who for the time being is residing out of New Zealand, whether appointed by order of any Court, or by deed, will, letters of administration, or otherwise howsoever, and whether the order or instrument creating the trust or appointing the trustee be made or executed out of New Zealand or not, may, if not expressly prohibited by the instrument creating the trust, delegate by deed to any person or persons residing in New Zealand all or any of the powers, authorities, and discretions vested in such trustee, so far as such powers, authorities, and discretions affect, or are capable of being exercised over, the trust estate in New Zealand.

Trustees about to leave New Zealand may also delegate.

5. Any trustee of real or personal property in New Zealand who for the time being is residing in New Zealand, but may be about to depart therefrom, whether appointed by order of any Court, or by deed, will, letters of administration, or otherwise howsoever, and

whether the order or instrument creating the trust or appointing the trustee be made or executed out of New Zealand or not, may in like manner exercise all or any of the powers of delegation by this Act conferred on any trustee residing out of New Zealand.

6. Every deed, act, matter, or thing done or executed by any person or persons under such delegated powers, authorities, and discretions shall be as valid and effectual as if the same had been done or executed by the person or persons who executed the deed by which such powers, authorities, and discretions were delegated.

Deeds and acts done under delegated powers valid.

7. Every power of attorney or other delegation by deed executed previous to the passing of this Act, by trustees or a trustee residing out of New Zealand, or, if residing therein, about to depart therefrom, delegating to persons or a person residing in New Zealand the exercise over real or personal property in New Zealand of the whole or any of the trusts, powers, authorities, and discretions vested in such trustees or trustee, and every deed, act, matter, or thing heretofore or hereafter done or executed by virtue of such power of attorney or other delegation, shall be and be deemed to have been as good, valid, and effectual at law and in equity as if this Act had been in force at the time of the execution of such power of attorney or other delegation.

Powers of attorney executed by trustees valid.

8. Where the account of trustees is kept at a bank, and the trustees, by writing under their hands communicated to the bank, arrange that such account shall be operated upon by cheques or drafts signed by some one or more of them, the bank shall be entitled to honour and pay such cheques or drafts as if the same had been signed by all such trustees, until the bank receives notice in writing of the revocation, by death or otherwise, of such arrangement.

One or more trustees may operate on bank account.

9. (1.) Where any trustee is desirous of being discharged from his trust he shall be entitled to retire therefrom on passing his accounts before the Registrar of the Court, and giving notice of such retirement to his co-trustee or co-trustees (if any), and to such other person (if any) as is empowered to appoint a new trustee or trustees.

Trustee may retire from trust.

(2.) If such co-trustee or co-trustees, or such other person as aforesaid empowered to appoint a new trustee or trustees, or any of them, refuse or neglect to appoint a new trustee or to consent to such appointment in place of the trustee so retiring, or if such retiring trustee be the sole trustee having power to appoint a new trustee, but the exercise of such power is impracticable or difficult without the assistance of the Supreme Court, it shall be lawful for such retiring trustee to apply in a summary way by originating summons to a Judge in Chambers for the appointment of a new trustee in his place.

How new trustee appointed.

(3.) The Judge may, upon such application for discharge, or for the appointment of a new trustee, make an order appointing some proper person as trustee in place of the trustee so desirous of being discharged from his trust, and direct any accounts and inquiries to be made, and make an order discharging such trustee from the trust and from all liability in respect thereof, and may make such order as to costs or otherwise as he may think fit, and may exercise any of the powers contained in sections forty-three, forty-four, forty-five, and forty-six of "The Trustee Act, 1883," and the person

who upon the making of such order shall be trustee shall have the same rights and powers as he would have had if appointed by judgment in an action duly instituted.

(4.) If on any such application the Judge shall think proper to appoint the Public Trustee to be trustee in lieu of such retiring trustee, it shall be the duty of the Public Trustee to undertake the trust.

(5.) This section shall apply to trusts created either before or after the passing of this Act.

Trustees relieved
from personal
liability in certain
cases.

10. 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. In this section "trustee" includes "executor" and "administrator."

Section 68 of prin-
cipal Act amended.

11. Section sixty-six of "The Trustee Act, 1883," is hereby amended by inserting next after the words "Judge of the Court," the words "or by any Registrar of the Court acting in pursuance of 'The Supreme Court Practice and Procedure Acts Amendment Act, 1893.'"