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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

*Legislative Council,
31st July, 1891.*

[AS AMENDED BY THE HOUSE OF REPRESENTATIVES.]

Hon. Mr. Buckley.

TRUSTEES ACT 1883 AMENDMENT.

ANALYSIS.

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A BILL INTITLED

AN ACT to amend the Law relating to the Duties, Powers, and Liability of Trustees. Title.

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

1. The Short Title of this Act is "The Trustees Act 1883 Amendment Act, 1891." Short Title.

2. For the purposes of this Act the expression "trustee" shall be deemed to include the Public Trustee and an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee. Interpretation.
51 and 52 Vict.,
c. 59.

The provisions of this Act relating to a trustee shall apply as well to several joint trustees as to a sole trustee.

3. On an appointment of a new trustee the number of trustees may be increased. Increase of number
of trustees.

4. On an appointment of a new trustee 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. Appointment of new
trustees.

5. (1.) It shall be lawful for a trustee to appoint a solicitor to be his agent to receive and give a discharge for any moneys or any valuable consideration or property receivable by such trustee under the trust by permitting such solicitor to have the custody of, and to produce, a deed or instrument having in the body thereof or indorsed thereon a receipt for such money, valuable consideration, or property, and such deed, instrument, or indorsed receipt being executed or signed by the trustee; and no trustee shall be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment. Receipt of money
by solicitor as
agent.

The producing of any such deed or instrument by such solicitor shall be sufficient authority to the person liable to pay or give such money, valuable consideration, or property for his paying or giving the same to the solicitor.

Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this Act had not passed in case he permits such money, valuable consideration, or property to remain in the hands or under the control of the solicitor appointed as aforesaid for a period longer than is reasonably necessary to enable such solicitor to pay or transfer the same to the trustee. 5

(2.) It shall be lawful for a trustee to appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to such trustee under or by virtue of a policy of assurance by permitting such banker or solicitor to have the custody of and to produce such policy of assurance with a receipt signed by such trustee; and no trustee shall be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment: Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this Act had not passed, in case he permits such money to remain in the hands or under the control of the banker or solicitor appointed as aforesaid for a period longer than is reasonably necessary to enable such banker or solicitor to pay the same to the trustee. 15 20

(3.) This section shall apply only where the money or valuable consideration or property is to be received after the passing of this Act. 25

Depreciatory
conditions on sales
by trustees.

6. (1.) No sale made by a trustee shall be impeached by any *cestui que* trust upon the ground than any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it shall also appear that the consideration for the sale was thereby rendered inadequate. 30

(2.) No sale made by a trustee shall, after the execution of 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 shall appear that such purchaser was acting in collusion with such trustee at the time when the contract for such sale was made. 35

(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. 40

(4.) This section shall apply only to sales made after the passing of this Act.

Loans by trustees.

7. (1.) No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of such property at the time when the loan was made, provided that it shall appear to the Court that in making such loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be competent to value, instructed and employed independently of any owner of the property, whether such valuer is resident in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two 45 50

equal third parts of the value of the property as stated in such report, land that the loan was made under the advice of such valuer expressed in such report. And this section shall apply to a loan upon any property of any tenure on which the trustee can lawfully lend.

5 (2.) No trustee lending money upon the security of any leasehold property shall be chargeable with breach of trust only upon the ground that in making such loan he dispensed, either wholly or partially, with the production or investigation of the lessor's title.

10 (3.) No trustee shall be chargeable with breach of trust only upon the ground that, in effecting the purchase of any property, or in lending money upon the security of any property, he shall have 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
15 and caution would have accepted.

(4.) This section shall apply to transfers of existing securities as well as to new securities, and to investments made as well before as after the passing of this Act, except where some action or other proceeding shall be pending with reference thereto at the passing of this
20 Act.

8. (1.) Where a trustee shall have improperly advanced trust money on a mortgage security which would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced thereon, the security shall be deemed an
25 authorised investment for such less 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.

(2.) This section shall apply to investments made as well before as after the passing of this Act, except where some action or other
30 proceeding shall be pending with reference thereto at the passing of this Act.

9. (1.) Where a trustee shall have committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it shall think fit, and notwithstanding
35 that the beneficiary may be a married woman entitled for her separate use, whether with or without a restraint upon anticipation, make such order as to the Court shall seem just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Indemnity for breach of trust.

40 (2.) This section shall apply to breaches of trust committed as well before as after the passing of this Act, except where an action or other proceeding shall be pending with reference thereto at the passing of this Act.

10. (1.) It shall be lawful for, but not obligatory upon, a trustee
45 to insure against loss or damage by fire any building, rents, or other insurable property to any amount not exceeding the full insurable value of such building, rents, or property, and to 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
50 consent of any person who may be entitled wholly or partly to such income.

Trustee may insure buildings.

Maintenance of children out of trust estate.

11. Where the estate of a person deceased leaving a widow and surviving children, or only surviving children, does not exceed *two hundred pounds* in value after providing for all liabilities, it shall be lawful for the trustee of such estate to apply from time to time a reasonable portion thereof towards the maintenance and support of such widow and children, and towards the education of such children during their respective minorities. 5

Advancement in life of children out of trust estate.

12. In any case where no provision or no sufficient provision is made in a will or trust-deed for paying moneys for the maintenance or advancement in life of the beneficiaries, a Judge of the Supreme Court, on an application made to him in chambers in a summary way by a trustee, may order such sum out of the estate as to him shall seem fit, to be paid and applied from time to time for the advancement in life of any beneficiary under age; and any payment so made in accordance with the Judge's order shall, in the event of such beneficiaries or any of them attaining the age of twenty-one years, be deemed to be in full or in part satisfaction, as the case may be, of the moneys to which they would then become entitled, and shall, in so far as any such Judge's order shall extend, bar all claims of other person or persons who, but for this enactment, would have been entitled to the whole or to a distributive share of such estate. 10 15 20

Statute of limitations may be pleaded by trustees.

13. (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:— 25

(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: 30

(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. 35 40

(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 other proceeding and this section had been pleaded. 45

(3.) This section shall apply only to actions or other proceedings commenced after the first day of ~~January~~ *October*, one thousand eight hundred and ~~ninety-two~~ *one*, and shall not deprive any executor or 50

administrator of any right or defence to which he is entitled under any existing statute of limitations.

14. It shall be lawful for a trustee, unless expressly forbidden by the instrument, if any, expressly creating the trust, to invest any trust funds in his hands in manner following, that is to say,—

Investment of trust funds by trustee.

(a.) In any of the stocks, funds, or other Government securities of any of the Australasian Colonies;

(b.) On real securities in New Zealand;

10 (c.) In the bonds, debentures, or other securities of any Municipal Corporation or County Council in New Zealand having authority to borrow money;

15 (d.) On deposit in any bank carrying on business in the colony under authority of any Act of the General Assembly, or in any Post-Office Savings-Bank established under "The Post-office Savings-bank Act, 1867;"

When not otherwise required, any trust funds may be paid into any such bank on current account or otherwise.

And also from time to time to vary any such investment.

15. Every power conferred by the preceding section shall be exercised according to the discretion of the trustee, but subject as regards subsections (a.), (b.), and (c.) to any consent required by the instrument, if any, creating the trust, with respect to the investment of trust funds. The last-preceding section shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers thereby given shall be in addition to the powers conferred by the instrument, if any, creating the trust.

Power of investment, how to be exercised.

16. If any person at the time of his death shall be engaged in or carrying on a business, trade, or occupation, it shall be lawful for his trustee to continue to carry on the same so long as he shall consider necessary or desirable, and in so doing to employ part of the deceased's estate, with power from time to time to increase or diminish the part of the estate so employed: Provided that such trustee shall, within *six* months of the aforesaid death, or the coming into operation of this Act, apply to a Judge of the Supreme Court in chambers for an order sanctioning such carrying-on of the business, and such Judge may make such order, or such other order in the case as he shall think fit: Provided further that the Supreme Court or a Judge may, on the application of any person interested in the estate, make an order that such business or trade shall not be carried on, or that the same may be carried on subject to conditions, or may make such other order as may seem proper.

Trustee may carry on business of the demised for certain period.

This section shall apply to any trustee who may have carried on or be carrying on the business, trade, or occupation of any person who may have died before the passing of this Act, subject that such trustee shall apply for a sanctioning order as required by the first proviso of this section.

17. Where an executor or administrator, liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have set apart a sufficient fund to answer any

Restriction of liability of executor or administrator in respect of rents, covenants, or agreements in leases in certain cases.

future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, when necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

Companies
authorised by law
may act as trustees.

18. Any company authorised by law to act as a trustee may be appointed and may lawfully act as the sole trustee of any such will or other instrument, notwithstanding that the same may provide for or direct the appointment of two or more trustees.

This section shall not apply to any instrument which provides that such company shall not be appointed a trustee.

This section shall extend to all instruments whether made before or after the passing of this Act, and to all appointments of any company as a trustee respectively made before or after the passing of this Act.

Definition of the
word "property."

19. The word "property," in section eighty of "The Trustees Act, 1883," shall, unless a contrary intention appears in the deed of appointment, extend to and include real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest whatsoever.

Vesting orders.

20. A vesting order made by the Supreme Court or a Judge thereof under "The Trustees Act, 1883," or *any Act repealed thereby*, shall, unless a contrary intention appears, operate on and have the effect of vesting all property, as defined by the last-preceding section, in the person or persons for such purpose named in such order; and every such vesting order, whether made before or after the passing of this Act, shall be valid, notwithstanding that the person or persons in whom the same purports to vest any property was not or were not appointed by the Court.

Application of Act.

21. (1.) This Act shall apply as well to trusts created by instrument executed before as to trusts created after the passing of this Act.

(2.) Provided always that, save as in this Act expressly provided, nothing herein contained shall authorise 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 or under any Act of the General Assembly, or by the instrument or instruments creating the trust, or by order of a Judge of the Supreme Court.