

TRUSTEE AMENDMENT BILL.

EXPLANATORY MEMORANDUM.

It is a well-established rule of law that where property is given by deed or will upon trust for purposes that are not clearly defined the gift is void for uncertainty, unless the only purposes for which the property can be applied are "charitable" in the legal sense of that term. If the purposes that are not clearly defined are partly charitable and partly non-charitable the whole gift is held to be invalid, upon the ground that the trustee could, if he wished, apply the whole property for the non-charitable purposes.

This rule has in many cases had the result of defeating an intention to give property to charity. A recent instance is the case of *In re Catherine Smith, deceased; Campbell v. N.Z. Insurance Co., Ltd., and the Attorney-General* ([1935] N.Z.L.R. 299). That case concerned a gift by will of a large sum of money upon trust for institutions, societies, or objects established "for charitable, *benevolent*, educational, or religious purposes." A majority of the Court of Appeal held the whole gift to be invalid by reason of the inclusion in the will of the word "*benevolent*", because a gift for benevolent purposes is not in law a good charitable gift. The result of this decision was that the whole sum of money involved, although obviously intended for charity, went to the next-of-kin.

In Victoria the Charitable Trusts Act was passed in 1914 making a trust for several purposes, some of which were charitable and valid and others non-charitable and invalid, severable, so that instead of the whole trust being held void the trust is given effect to as if it had been wholly for the charitable and valid purposes.

This legislation was re-enacted in the same form in the Trusts Act in 1915 and again in 1928 in section 131 of the Property Law Act. The legislation has proved successful and the law reports disclose cases where trusts, which would otherwise have been void, have been saved by the legislation.

Clause 2 of this Bill is intended to have the same effect as the Victorian legislation.

Clause 3 is intended to bring New Zealand law into conformity with English law, and is considered necessary by reason of the fact that certain Government and other securities are on sale at a premium, and, while there is statutory authority to purchase these securities at par, it is doubtful if the authority extends to a purchase at a premium.

Clause 4 re-enacts and extends section 30 of the Mortgagees and Tenants Relief Act, 1933. Trustees are under a disability in that while they may hold mortgages which have ceased, by reason of a decrease in value of the land charged, to be authorized trust investments they cannot renew such mortgages.

Clause 5: This clause empowers trustees to invest trust funds in debentures issued by any "finance" company that complies with the following conditions, *inter alia*:—

- (1) The paid-up share capital of the company to be not less than £100,000:
 - (2) At least 75 per cent. of the paid-up share capital carrying voting-rights to be held by a co-operative dairy company:
 - (3) The business of the company to be the lending of money to members of the said co-operative dairy company, with the usual "trustee" margin of security:
 - (4) The borrowing powers of the company to be limited to an amount not exceeding five times its paid-up capital:
 - (5) The company to establish and maintain a Reserve Fund (corresponding to the General Reserve Fund of the Mortgage Corporation), every mortgagor to the company being required to contribute an amount equal to 2 per cent. of his loan to the Reserve Fund:
 - (6) The dividends to shareholders to be limited to 5 per cent. per annum cumulative.
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Right Hon. Mr. Coates.

TRUSTEE AMENDMENT.

ANALYSIS.

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A BILL INTITULED

AN ACT to amend the Trustee Act, 1908.

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

1. This Act may be cited as the Trustee Amendment Act, 1935, and shall be read together with and deemed part of the Trustee Act, 1908 (hereinafter referred to as the principal Act).

10 2. (1) No trust shall be held to be invalid by reason that some non-charitable and invalid as well as some charitable purpose or purposes is or are or could be deemed to be included in any of the purposes to or for which an application of the trust funds or any part thereof is by such trust directed or allowed.

15 (2) Any such trust shall be construed and given effect to in the same manner in all respects as if no application of the trust funds or any part thereof to or for any such non-charitable and invalid purpose had been or should be deemed to have been so directed or allowed.

20 (3) This section shall not apply to any trust declared before or to the will of any testator dying before the passing of this Act.

No. 78—1.

Title.

Short Title.

See Reprint of Statutes, Vol. VIII, p. 873

Inclusion of non-charitable and invalid purposes not to invalidate a trust.

Cf. 1928, No. 3754, s. 131 (Victoria)

Trustees may purchase certain securities at a premium.

Cf. 15 Geo. V, c. 19, s. 2

See Reprint of Statutes, Vol. VIII, p. 908

Trustee may arrange extension or renewal of mortgage.

3. Section ninety-five of the principal Act is hereby amended by adding the following subsections:—

“(4) A trustee having authority to invest in any of the securities mentioned in paragraphs (a) and (c) of subsection one hereof may invest in any such securities notwithstanding that the same may be redeemable and that the price exceeds the redemption value: 5

“Provided that in the case of any such securities (other than securities of the Government of New Zealand) which are liable to be redeemed at par or at some other fixed rate a trustee shall not be entitled to invest in any such securities— 10

“(a) At a price exceeding fifteen per centum above par or such other fixed rate; or

“(b) If any such security is liable to be redeemed within fifteen years of the date of purchase, at a price exceeding its redemption value. 15

“(5) A trustee may retain until redemption any redeemable security which may have been purchased pursuant to the powers conferred by this Act.” 20

4. (1) Unless expressly forbidden by the instrument (if any) creating the trust it shall be lawful for any trustee mortgagee, under a mortgage to which Part I of the Mortgagors and Tenants Relief Act, 1933, has at any time applied, to arrange with the mortgagor for an extension or for a renewal of such mortgage for a term not exceeding five years subject to such conditions and at such rate of interest as the trustee may think fit (whether or not such rate is lower than the rate prescribed in the mortgage), notwithstanding that a higher rate of interest might be obtainable for a new loan or that by reason of any decrease in the value of the property in respect of which the investment was made such extension or renewal is not an investment authorized by the trust instrument or the general law. The authority conferred by this subsection shall be deemed to authorize any trustee mortgagee as aforesaid, unless expressly forbidden by the instrument (if any) creating the trust, to arrange for an extension or renewal of any mortgage which formed part of the trust estate when the trust instrument came into operation, notwithstanding that such mortgage was not then an investment authorized by the trust instrument or by the general law. 25 30 35 40

(2) For the purposes of this section the term "mortgagor" has the same meaning as in the Mortgagors and Tenants Relief Act, 1933.

(3) For the purposes of this section the expression "trustee mortgagee" includes a land settlement association incorporated under the Land Settlement Finance Act, 1909.

See Reprint
of Statutes,
Vol. IV,
p. 932

(4) The authority conferred by this section may be exercised in respect of mortgages in which any moneys belonging to the Government Insurance Account are for the time being invested.

(5) Nothing in this section shall be construed to limit the powers conferred on a trustee by section two of the Trustee Amendment Act, 1924, or otherwise howsoever, and the powers conferred by the said section shall be deemed to include power to reduce the rate of interest payable under any mortgage.

Ibid., Vol. VIII,
p. 917

(6) Section thirty of the Mortgagors and Tenants Relief Act, 1933, is hereby consequentially repealed.

Consequential
repeal.

5. (1) In this section—

"Co-operative dairy company" means a company registered, whether before or after the passing of this Act, as a co-operative dairy company under Part III of the Dairy Industry Act, 1908:

Trust funds
may be
invested in
securities issued
by companies
that comply
with the
requirements
of this section.

"Company" (other than a co-operative dairy company as hereinbefore defined) means a company formed and registered, after the passing of this Act, under the Companies Act, 1933:

Ibid., Vol I,
p. 90

"Debenture" has the same meaning as in the Companies Act, 1933.

(2) It shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in debentures issued by any company in respect of which all of the conditions following are satisfied, that is to say,—

(a) That the share capital of the company in respect of shares to which voting-rights are attached has been paid up in cash to an amount not less than *one hundred* thousand pounds:

- (b) That not less than *seventy-five* per centum of the authorized share capital to which voting-rights are attached has been subscribed for and paid up in cash by a co-operative dairy company, and that such dairy company is prevented by the terms of the memorandum of association from transferring any shares held by it so as to reduce its holding below the minimum prescribed in this paragraph: 5
- (c) That the object of the company or its principal object is the making of loans to members of the co-operative dairy company aforesaid, such loans being secured by way of first mortgage of land or of interests in land in New Zealand: 10 15
- (d) That the company is debarred from making any loan as aforesaid in excess of two-thirds of the value of the mortgagor's interest in the land on which the loan is secured, such value being determinable in every case by an independent valuer: 20
- (e) That the company has established and shall at all times maintain a Reserve Fund, and that every mortgagor to the company shall be required to pay to the credit of the Reserve Fund an amount equal to *two* per centum of the amount of his loan, such amount, at the option of the mortgagor, to be paid in cash at the time of the making of the loan or to be added to the amount of the loan and to be secured by the mortgage as if it formed part of the loan: 25 30
- Provided that no payment to the Reserve Fund in accordance with this paragraph shall be required in respect of the renewal of a loan or the execution of a new mortgage in substitution for a former mortgage securing the whole or any part of a loan in respect of which payment to the Reserve Fund has been made in accordance with this paragraph: 35 40
- (f) That the Reserve Fund shall be kept invested in securities of the classes authorized by paragraphs (a) and (c) of subsection one of section ninety-five of the principal Act:

- 5 (g) That the debentures in which any trust funds
are invested shall constitute a charge on
all the assets of the company and that such
charge shall have priority over all other
charges on such assets (except such statutory
charges, if any, as are made a first charge on
the assets of the company, or any charge
created by a prior issue of like debentures and
expressed to have priority over any later issue
of debentures):
- 10 (h) That the authority of the company to borrow
money (whether on security or not) is so
limited that the total amount borrowed and
for the time being outstanding cannot at any
time exceed an amount equal to five times the
amount of the paid-up capital of the company:
- 15 (i) That the shareholders of the company are
entitled to receive a cumulative dividend
not exceeding *five* per centum per annum.