TRINIDAD AND TOBAGO.

No. 9—1925.

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[L.S.]

I ASSENT,

H. A. BYATT,
Governor.

2nd April, 1925.

AN ORDINANCE to amend and consolidate the law relating to Trustees.

[*2nd April,* 1925.]

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows :—

1. This Ordinance may be cited as the Trustee Ordinance, 1925. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

"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 ;

[*Price* 1/-]

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"Convey" and "conveyance" applied to any person include the execution by that person of every necessary or suitable assurance or instrument 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, including the acts to be performed by married women in accordance with the Married Womens' Deeds Ordinance, No. 98;

"Devisee" includes the personal representative of a devisee and the devisee of a personal representative, and any person who may claim right by devolution of title of a similar description;

"Instrument" includes Ordinance;

"Land" includes incorporeal as well as corporeal hereditaments of every tenure or description, and any interest therein, and also an undivided share of land;

"Lunatic" means any person who has been found by due course of law to be of unsound mind and incapable of managing his affairs;

"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, and also include and relate to an encumbrance and an encumbrancer respectively under the Real Property Ordinance, No. 60;

"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;

"Person of unsound mind" means any person, not an infant, who, not having been found to be a lunatic, is incapable from infirmity of mind of managing his own affairs;

"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, and 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 Supreme Court under this Ordinance, includes any fund, annuity, or security transferable in books kept by any corporation, association, 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 execution 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;

"Supreme Court" means the Supreme Court of the Colony or a Judge thereof.

PART I.

Investments.

Authorised 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: —

(*a*) In any securities in which trustees in England are for the time being authorised by the law of England to invest trust funds;

(*b*) In any securities the interest on which is for the time being guaranteed by the Imperial Parliament or by the Government of the Colony, or in any public debentures issued under the authority of and guaranteed by any Ordinance;

(*c*) Upon freehold securities in the Colony and on first mortgages thereon,

and may also from time to time vary such investment.

Discretion of trustees.

4. The powers conferred by section 3 of this Ordinance 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.

Application of preceding sections.

5. The last two preceding sections shall apply as well to trusts created before as to trusts created after the commencement of this Ordinance, and the powers thereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust.

Loans and investments by trustees not chargeable as breaches of trust.

6.—(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 by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) 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.

(3) This section 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 Ordinance, except where an action or other proceeding was pending with reference thereto at the commencement of this Ordinance.

Liability or loss by reason of improper investments.

7.—(1) 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 authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section applies to investments made as well before as after the commencement of this Ordinance, except where an action or other proceeding was pending with reference thereto at the commencement of this Ordinance.

Trustee not liable for continuing to hold unauthorized investment.

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

PART II.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

Appointment of New Trustees.

Power of appointing new trustees.

9.—(1) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the Colony 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 new trustees by the instrument, if any, creating the trust, or if there is no such 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 the Colony, 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) This section applies to trusts created either before or after the commencement of this Ordinance.

Retirement of trustee.

10.—(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 is 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 to have retired from the trust, and shall, by the deed, be discharged therefrom under this Ordinance, 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) This section applies to trusts created either before or after the commencement of this Ordinance.

Vesting of trust property in new or continuing trustees.

11.—(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 Ordinance 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 continuing 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 Ordinance.

(4) For purposes of registration of the deed, 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 Ordinance.

(5) This section applies only to deeds executed after the thirty-first day of December, 1884.

Purchase and Sale.

12.—(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 re-sell, without being answerable for any loss.

Power of trustee for sale to sell by auction, &c.

(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 thirty-first day of December, 1884.

13—(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.

Power to sell subject to depreciatory conditions.

(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.

(4) This section applies only to sales made after the commencement of this Ordinance.

Power to sell or buy.

14. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 4 of the Conveyancing Ordinance, No. 72.

Married woman as bare trustee may convey.

15. When any freehold hereditament is vested in a married woman as a bare trustee she may convey or surrender it as if she were a *feme sole.*

Various powers and liabilities.

Power to authorise 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 56 of the Conveyancing Ordinance, No. 72; 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 Ordinance 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) This section applies only where the money or valuable consideration or property is received after the commencement of this Ordinance.

(5) 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.

Power to insure building.

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 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.

(3) This section applies to trusts created either before or after the commencement of this Ordinance, but nothing in this section 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.

Power of trustees of renewable leaseholds to renew and raise money for the purpose.

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 any obligation to renew or to contribute to the expense 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 trustee.

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

(3) This section applies to trusts created either before or after the commencement of this Ordinance, but nothing in this section 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.

Power of trustee to give receipts.

19.—(1) 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.

(2) This section applies to trusts created either before or after the commencement of this Ordinance.

Power for executors and trustees to compound, &c.

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

(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 for 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.

(4) This section applies to executorships, administratorships, and trusts constituted or created either before or after the commencement of this Ordinance.

Powers of two or more trustees.

21.—(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 thirty-first day of December, 1884.

Exoneration of trustees in respect of certain powers of attorney.

22. 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 had 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.

Implied indemnity of trustees.

23. 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, broker, 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 trusts or powers.

PART III.

Powers of the Court.

Appointment of New Trustees and Vesting Orders.

Power of the Court to appoint new trustees.

24.—(1) The Supreme 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.

(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 orders as to land.

25. In any of the following cases, namely :—

(i) Where the Supreme Court appoints or has appointed a new trustee ; and

(ii) 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,

(*a*) is an infant, or

(*b*) is a lunatic or person of unsound mind, or

(*c*) is out of the jurisdiction of the Supreme Court, or

(*d*) cannot be found ; and

(iii) Where a lunatic or person of unsound mind is either solely or jointly with any other person entitled to or possessed of any land, or entitled to a contingent right therein by way of mortgage ; and

(iv) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land ; and

(v) 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

(vi) Where there is no 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 personal representative or devisee of a trustee who was entitled to or possessed of land and is dead ; and

(vii) 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 Supreme Court may make an order (in this Ordinance 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

(*a*) 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

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

Orders as to contingent rights of unborn persons.

26. 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 land on any trust, the Supreme Court may make an order releasing 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.

27. 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 Supreme 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 infant mortgagee.

28. 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 Supreme 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 :—

Vesting order in place of conveyance by personal representative of mortgagee.

(*a*) Where a personal representative or devisee of the mortgagee is out of the jurisdiction of the Supreme Court or cannot be found ; and

(*b*) Where a 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 personal representative of the mortgagee whether he is living or dead ; and

(*e*) Where there is no 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 personal representative or devisee.

Vesting order consequential on judgment for sale or mortgage of land.

29. Where the Supreme 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, 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 Ordinance ; and the Court may, if it thinks expedient, make an order vesting the land or any part thereof, for such estate as the Court thinks fit, in the purchaser or mortgagee or in any other person.

Vesting order consequential on judgment for specific performance, &c.

30. 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 Supreme 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 Ordinance, 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 Ordinance, and thereupon the Supreme 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.

31. 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 Supreme 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.

32. In all cases where a vesting order can be made under any of the foregoing provisions, the Supreme 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. Power to appoint person to convey.

33.—(1) In any of the following cases, namely :— Vesting orders as to stock and choses in action.

(i) Where the Supreme 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 a lunatic or person of unsound mind, or

(*c*) is out of the jurisdiction of the Supreme Court, or

(*d*) cannot be found ; 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, according to the direction of the person absolutely entitled thereto, for twenty-eight days next after a request in writing has been made to him by the person so entitled, or

(*f*) 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 Supreme 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, or

(iv) Where a lunatic or person of unsound mind is entitled solely or jointly with any other person to stock or to a chose in action, upon trust or by way of mortgage,

the Supreme 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 Ordinance, may transfer the stock to himself or any other person, according to the order, and all corporations, associations, and companies 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 corporation, association, or company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

(5) The Supreme 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 Ordinance is to be exercised.

(6) The provisions of this Ordinance as to vesting orders shall apply to shares in ships registered under the Acts of Parliament relating to merchant shipping as if they were stock.

Persons entitled to apply for orders.

34.—(1) An order under this Ordinance 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 Ordinance 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.

Powers of new trustee appointed by Court.

35. Every trustee appointed by the Supreme Court 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.

Power to charge costs on trust estate.

36. The Supreme 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.

Trustees of charities.

37. The powers conferred by this Ordinance 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 Supreme Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Supreme Court under its general or statutory jurisdiction.

Orders made upon certain allegations to be conclusive evidence.

38. Where a vesting order is made as to any land under this Ordinance founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the personal representative or devisee of a mortgagee is out of the jurisdiction of the Supreme Court or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the 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, or has died and it is not known who is his 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 Supreme Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

Orders of Court to be registered.

39. In all cases where the Supreme Court shall under the provisions of this Ordinance make a vesting order, or any order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any unborn person, or class of unborn persons, in any land, a copy of such order duly certified under the hand of one of the Judges of the Court shall be registered in the office of the Registrar-General, and such order shall take effect upon and from the time of the registration of such copy.

Registration of vesting order made by High Court in England or Ireland.

40. Where the High Court in England or Ireland has made a vesting order under the Trustee Act, 1893, as amended by the Trustee Act, 1893, Amendment Act, 1894, in respect of land or personal estate in the Colony, and the vesting order so made is produced to the Registrar-

General for registration, such vesting order shall on payment of a fee of one pound be registered in the office of the Registrar-General.

For the purposes of this section, a duplicate of any vesting order sealed with the seal of the Court making the same, or a copy thereof certified as correct by the officer having the custody of the original order, shall have the same effect as the original.

Payment into Court by Trustees.

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

Payment into Court by trustees.

(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 Supreme 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, broker, 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.

PART IV.

Miscellaneous.

Power to give judgment in absence of a trustee.

42. Where in any action the Supreme 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.

43.—(1) Where a trustee or other person is for the time being authorised to dispose of land by way of sale, exchange, or partition, the Supreme Court may sanction his so disposing of the land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the 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.

Power to make beneficiary indemnify for breach of trust.

44.—(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Supreme Court may, if it thinks fit, 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.

(2) This section shall apply to breaches of trust committed as well before as after the commencement of this Ordinance, but shall not apply so as to prejudice any question in an action or other proceeding which is pending at the commencement of this Ordinance.

Trustees (except in cases of fraud) may enjoy benefit of and plead enactments relating to limitation of actions.

45.—(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 own use, the following provisions shall apply :—

(*a*) All rights and privileges conferred by any enactment relating to limitation of actions 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 enactment relating to limitation of actions 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 enactment 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 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.

(3) For the purposes of 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.

(4) The provisions of this section relating to a trustee shall apply as well to several joint trustees as to a sole trustee.

Court may relieve trustee from liability for honest and reasonable breach of trust.

46. If it appears to the Supreme 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 commencement of this Ordinance, but has acted honestly and reasonably, and ought fairly to be excused for the breach 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.

Indemnity.

47. This Ordinance and every order purporting to be made under this Ordinance, 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.

Rules of Court.

48.—(1) The Chief Justice, with the concurrence of a Puisne Judge, may make Rules of Court regulating the practice and procedure in respect of any proceedings in the Supreme Court under this Ordinance.

(2) All Rules made under this section shall be published in the *Royal Gazette.*

49. The enactments specified in the Schedule to this Ordinance are hereby repealed to the extent indicated in the third column of that Schedule. Repeal.

SCHEDULE.

No. of Ord.	Short title.	Extent of Repeal.
No. 72	The Conveyancing Ordinance. ..	Sections 33 to 40 inclusive.
No. 91	The Trustee Ordinance	The whole.
No. 92	The Property and Trustees Ordinance	Sections 17, 21, 22 and 23.
No. 14 of 1922	The Trustee (Amendment) Ordinance, 1922	The whole.

Passed in Council this thirteenth day of March, in the year of Our Lord one thousand nine hundred and twenty-five.

JOHN DE NOBRIGA,
Clerk of the Council.

OBJECTS AND REASONS.

The object of this Bill is to amend and consolidate the law relating to Trusts and Trustees.

The local law on this subject is at present contained in the various Ordinances set out in the Schedule to the Bill. These enactments were based on the law of England as it existed at the date of their introduction in this Colony but the Imperial Statutes on this subject have long since been repealed and have been replaced by the Trustee Act of 1893. It is therefore desirable to bring the law of the Colony into line with that now in force in England.

Clause 45 of the Bill (relating to the limitation of actions against trustees), and Clause 46 (relating to relief of trustees), are taken respectively from the Trustee Act, 1888 and the Judical Trustee Act, 1896.

The Bill is practically a copy of the Imperial legislation with such amendments as are necessary to adapt it to local circumstances.

OFFENCES AGAINST THE PERSON ORDINANCE.

Table showing the sources of the Ordinance.

BILL.	LOCAL SOURCE.	REMARKS.
1	Ordinance 14 section 1	
2	New ..	.. Interpretation.
3	Ordinance 14 section 2	
4	Ordinance 14 section 3	.. Amended. Accessories *before* the fact are now dealt with in the Accessories and Abettors Ordinance, 1895.
5	Ordinance 14 section 4	
6	do. do. 5	
7	do. do. 6	
8	do. do. 11	
9	do. do. 8	
10	do. do. 23	
11	New ..	.. Now provided for in the Malicious Injury to Property Ordinance, No. 16.
12	Ordinance 14 section 9	
13	do. do. 10	
14	do. do. 12	
15	do. do. 13	
16	do. do. 14	
17	do. do. 15	
18	do. do. 16	
19	New ..	.. Taken from Imperial Act of 1861, s. 21.
20	Ordinance 14 section 17	
21	do do 18	
22	do. do. 19	
23	do. do. 20	
24	do. do. 21	
25	do. do. 22	
26	do. do. 24	
27	do. do. 25	
28	do. do. 26	
29	do. do. 29	
30	New ..	.. Taken from Imperial Act of 1861, s. 35, with definition of vehicle added.
31	Ordinance 14 section 33	.. Amended.
32	do. do. 30	
33	do. do. 31	.. Amended.
34	do. do. 32	
35	do. do. 34	
36	do. do. 36	.. Amended by omission of fourth and fifth paragraphs, which are provided for under s. 19 of the Children Ordinance, 1925.
37	do. do. 37	
38	do. do. 38	

Table showing the sources of the Ordinance.—*Continued.*

Bill.	Local Source.			Remarks.
39	Ordinance 14 section 39			As amended by sections 2 and 3 of Ordinance No. 7 of 1914.
40	do.	do.	40	
41	do.	do.	41	
42	do.	do.	42	
43	do.	do.	44	
44	do.	do.	43	
45	do.	do.	48	
46	do.	do.	46	
47	do.	do.	49	Wording amended to follow s. 53 of 1861 Act.
48	New			
49	Ordinance 14 section		50	
50	do.	do.	45	As amended by section 4 of Ordinance 7 of 1914.
51	Ord. 7 of 1914 section 5			
52	do.	do.	6	
53	do.	do.	7	
54	do.	do.	8	
55	Ordinance 14 section 51			
56	do.	do.	52	
57	do.	do.	53	
58	do.	do.	54	
59	do.	do.	55	
60	do.	do.	56	
61	New			Taken from Act of 1861, s. 62.
62	Ordinance 14 section 47			Reference to females omitted.
63	do.	do.	27	
64	New			
65	Ordinance 14 section		35	
66	do.	do.	28	Wording amended.
67	do.	do.	58	
68	New			Taken from Act of 1861, s. 71.
69	Repeal			

Note.—Sections 7, 57 and 59 of Ordinance No. 14 are omitted as being no longer necessary.