



ANNO SEXTO

GEORGII V REGIS.

A.D. 1915.

No. 1201.

An Act to facilitate the Execution of Trusts during the present War.

[Assented to, November 18th, 1915.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Execution of Trusts (War Facilities) Act, 1915." Short title.

2. For the purposes of this Act a trustee shall be deemed to be engaged on war service— When trustee deemed to be engaged on war service.

(a) if he is engaged outside the said State on naval or military service with His Majesty's navy or army, or under the provisions of any Act of the Parliament of the Commonwealth of Australia, during the war in which His Majesty is at present engaged; or Imp. Act 5, Geo. 5, c. 13, s. 1 (2).

(b) if he is engaged on service in any work outside the said State, in connection with the said war, of any Red Cross Society or Ambulance Association, or any other body with similar objects; or

(c) if, in connection with the said war, he is a prisoner of war in the enemy's country, or is interned in the country of a neutral Power.

3. (1) A trustee (whether a sole trustee or a trustee with others) may, notwithstanding any rule of law or equity to the contrary, by power of attorney, attested by one or more witnesses, delegate to any person capable of being appointed to be a trustee of the trust, or to the Public Trustee, the execution, during any period for which the trustee is engaged on war service within the meaning of this Act and a further period of six months thereafter, of any trust of which he is trustee. Power to delegate execution of trusts by power of attorney. Ibid., s. 1 (1). Cf. Vict., 2595, 1915, s. 2.

(2) Any

Execution of Trusts (War Facilities) Act.—1915.

(2) Any power of attorney given under this Act may, unless it is expressly or by necessary implication confined to some particular trust or trusts, be construed as applying to all or any trusts of which the donor is trustee.

(3) A power of attorney given under this Act shall not be invalid merely on the ground that it is not expressly limited to the period permitted by subsection (1) hereof, but, if otherwise valid, shall be effectual for the period so permitted, or for any shorter period expressed in such power of attorney.

(4) Any power of attorney given under this Act—

(a) may be limited to any particular power or powers:

(b) may contain a power of revocation.

Extension of Act to certain absent persons, though not engaged on war service.

Imp. Act 5, Geo. 5, c. 13, s. 3.

4. The powers conferred by this Act on trustees in relation to any period for which they are engaged on war service, may also be exercised by any trustee not engaged on war service in relation to any period during which, being absent from the said State, he is for any reason connected with the said war unable to return to the said State; and this Act shall have effect, in its application to such trustees, with the necessary modifications.

Delegation by tenants for life, executors, and administrators.

5. (1) A tenant for life, or a person who under the Settled Estates Act, 1880, or any Act amending that Act, has the powers of a tenant for life, shall, for the purposes of this Act, be deemed to be a trustee: Provided that any delegation by him under this Act shall be made only for the purposes of the said Acts and only to the trustees of the settlement or to one or more of them.

(2) An executor of the will, or an administrator of the estate, of a deceased person is a trustee within the meaning of this Act: Provided that any delegation by him under this Act—

(a) shall be made only in relation to the administration of the estate of the deceased person, and only to his co-executor or co-administrator (if any), or to a person who would be capable of being appointed by the Supreme Court to be administrator with the will annexed or administrator of such deceased person if no executor or administrator existed:

(b) shall not take effect until the power of attorney whereby such delegation is made, or a document purporting to be a copy thereof and to be certified by at least two persons to be a correct copy, has been deposited with the Registrar of Probates.

For the purpose of this subsection, a person shall not be deemed to be incapable of being appointed administrator with the will annexed or administrator by reason only that some other person would have, according to the law or practice of the Court, a prior claim to be so appointed.

Execution of Trusts (War Facilities) Act.—1915.

6. All jurisdiction and powers of any court shall apply to the donee of a power of attorney given under this Act, so far as respects the execution of the trust, in the same manner as if the donee were a trustee of the trust.

Jurisdiction of Courts preserved.

Ibid., s. 1 (3).

7. (1) When a copy of a power of attorney given under this Act has been enrolled in the General Registry Office under the provisions of the Act No. 8 of 1841, or such power of attorney has been deposited in the said office under the provisions of the Act No. 19 of 1852 or of the Act No. 22 of 1853, then, notwithstanding anything in any Act or rules or regulations, the Treasurer of the said State or any other person shall not refuse to act on the authority of such power of attorney, although it is not attested as required by such Act or rules or regulations or fails in any other respect to comply therewith or with any formality required by law or practice.

Supplemental provisions as to powers of attorney given under this Act.

Cf. *ibid.*, s. 2.

(2) For the purpose of the transfer of any inscribed stock, the donee of a power of attorney given under this Act may, himself, on complying with the requirements of all Acts (other than this Act) and of any rules or regulations or instruments relating to the transfer of such stock, delegate to an attorney the power to transfer.

(3) The fact that it appears from any power of attorney given under this Act, or from any evidence required for the purposes of any such power of attorney, or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect the said Treasurer, or any other person in whose books the stock is inscribed or registered, with any notice of the trust.

(4) In this section the expression "stock" includes shares and any fund, annuity, or security transferable in books kept by the said Treasurer or any other person, or by any instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein.

8. (1) No revocation of any power of attorney given under this Act, whether such revocation is by operation of law or otherwise, shall be effectual as against any person dealing in good faith with the donee of the power in ignorance of such revocation.

Revocation of power of attorney not effectual as against person in ignorance thereof.

Cf. S.A., 944, 1907, s. 4.

(2) The provisions of this section shall not be construed as affecting, in any way, the provisions of section 6 of the Act No. 22 of 1853.

9. For the purposes of this Act, a trustee shall be presumed to remain alive until definite news of his death has been received or such death has been presumed by the Supreme Court; and the fact that he has been reported "missing" or "missing and believed to be killed" shall not be construed as giving to persons having knowledge of such report notice of his death, although in fact it has occurred.

Effect of trustee being reported "missing."

*Execution of Trusts (War Facilities) Act.—1915.***Evidence.**

Imp. Act 5, Geo. 5,
c. 13, s. 1 (4).

10. A statutory declaration by the donee of a power of attorney under which the execution of a trust is delegated, that the donor is engaged on war service within the meaning of this Act, or that in any transaction the donee is acting in execution of the trust, shall be accepted as sufficient evidence of the fact by any person dealing with the donee.

Retrospective operation of the Act.

Cf. Vic. 2596, 1915,
s. 6.

11. A power of attorney given during the war in which His Majesty is at present engaged, but before the passing of this Act, shall be as valid and effectual as if it had been given after such passing; and the provisions of this Act with regard to powers of attorney given under this Act shall apply thereto: Provided that when, by any such power of attorney, the trustee has purported to delegate the execution of a trust for a longer period than that permitted by subsection (1) of section 3, this section shall apply to such power of attorney for the period so permitted and no longer.

Power to appoint a substitutionary or additional trustee when a trustee is engaged on war service.

12. (1) When a trustee is engaged on war service, the Court may, if it deems it expedient, make an order for the appointment of a new trustee in substitution for, or in addition to, the trustee so engaged: Provided that an appointment made by virtue of this section shall not be for a longer period than that for which the execution of a trust may be delegated under section 3.

(2) Unless, at the time of the appointment or subsequently, the Court otherwise orders, and subject to any order of the Court, upon the expiration of the period for which any such appointment is made, the trustee so appointed shall cease to be a trustee of the trust; and thereupon the Court may make such vesting or other order or orders with regard to any property and rights vested in him as such trustee, or with regard to any other matters, as the Court deems proper.

No. 586 of 1893.

(3) The provisions of the Trustee Act, 1893, shall apply for the purposes of any application under this section; and upon any order being made by the Court under or for any of the purposes of this section the provisions of that Act, *mutatis mutandis*, shall apply.

(4) In this section the term "Court" means the Supreme Court or a Judge thereof.

Act not to apply to implied trusts.

Imp. Act 5, Geo. 5,
c. 13, s. 4.

13. This Act shall not apply to any trustee under an implied or constructive trust.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

H. L. GALWAY, Governor.