



ANNO QUINQUAGESIMO QUARTO ET QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

A.D. 1891.

No. 523.

An Act to facilitate dealings with Trust Estates, and for other purposes.

[*Assented to, December 19th, 1891.*]

BE it Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows, that is to say :

- 1.** This Act may be cited for all purposes as “The Trustees Appointment Act, 1891.” Short title.
- 2.** This Act is permissive only, and trustees may be appointed and trust estates may be transferred, conveyed, and assigned as if this Act had not been passed. Act to be permissive.
- 3.** This Act shall not apply to any trust estates held upon any trust created by any instrument expressly forbidding the application of this Act ; but, except as provided by this section, this Act shall apply to all trust estates. Application of Act.
- 4.** In the interpretation of this Act the following words shall have the following meanings:— Interpretation.

“Trust estates” shall include real and personal estate of every description held upon trust :

“Appointment of new trustees” shall include every appointment of new trustees, and whether such new trustees are to act solely or jointly with any old trustees :

“Real Property Act” shall include “The Real Property Act, 1886,” and all Acts amending the same.
- 5.** Any

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Form of appointment of new trustee.

5. Any appointment of new trustees, if signed by the persons entitled to exercise the power of appointment and by the new trustees, and attested in manner prescribed by the Real Property Act for the attestation of instruments, and made in the form or to the effect contained in the First Schedule hereto, or as near thereto as circumstances will permit, shall be sufficient and valid and effectual to all intents and purposes, so far as regards the form and mode of execution and attestation thereof.

Extension of power of appointing new trustees.

6. Any power of appointing new trustees vested in any persons within the province, jointly with any persons absent therefrom, and who shall have been continuously absent therefrom for at least one year then immediately preceding, may be exercised by such first-mentioned persons solely as if such power were exclusively vested in them, and such power shall extend to authorise the appointment of new trustees in the places of any trustees absent from the province, and having been continuously absent therefrom as aforesaid, and such trustees on any appointment of new trustees in their places shall cease to be trustees.

Appointment of new trustees may be registered.

7. On any appointment of new trustees, a memorandum of such appointment may be registered in the General Registry Office, or in the Lands Titles Registration Office, at Adelaide.

Registration to vest estates in new trustees.

8. On the registration of any memorandum of the appointment of new trustees, such trustees shall be deemed to be duly appointed, and the trust estates held upon the trusts to which such new trustees are appointed shall, without any conveyance, transfer, or assignment, vest in the new trustees, either solely or jointly with the old trustees, as the case may require, for all the estate and interest of the old trustees therein, subject to the trusts affecting such trust estates then subsisting, and capable of taking effect: Provided that—

i. In order to affect any land not held under the provisions of the Real Property Act, the memorandum shall be registered in the General Registry Office:

ii. In order to affect any land held under the provisions of the Real Property Act, the memorandum shall be registered in the Lands Titles Registration Office, and the Registrar-General shall enter in the register book a memorial of such memorandum.

Registered proprietors.

9. Upon the entry in the register book of the memorial provided for by sub-division ii. of the preceding section, the persons in whom the trust estates shall vest pursuant to the said section shall be the registered proprietors thereof for all the purposes of the Real Property Act.

Registration with power of disposition to lessen number of joint owners.

10. Whenever any land is brought or dealt with under the provisions of the Real Property Act, the application or instrument affecting the same may require the registration consequent thereon, if in favor of two or more persons, to be made with the addition of the

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the words “with power of disposition to any” less number of “registered proprietors” to be specified in such application or instrument, and thereupon the Registrar-General shall include in the registration the words desired, and thereafter, whilst such registration shall continue, the number of registered proprietors so specified whilst registered with others as joint owners may deal with and dispose of the registered estate or interest as if they were registered as sole proprietors thereof.

11. Every memorandum of the appointment of new trustees presented for registration pursuant to this Act shall be in the form contained in the Second Schedule hereto, and shall contain the particulars therein referred to.

Form of memorandum of appointment of new trustee.

12. No memorandum of the appointment of new trustees shall be received for registration unless the contents thereof shall be verified by affidavit or declaration accompanying such memorandum in the form contained in the Third Schedule hereto, and made by the persons entitled to exercise and exercising the power by which the new trustees are appointed, or, if such persons number more than three, by any three of such persons.

Verification of memorandum.

13. When a power of appointing new trustees is exercisable and exercised by any meeting or body of persons by resolution or voting, the affidavit or declaration required to be made by the preceding section may be made by any three persons present at the exercise of such power, of whom the chairman or person presiding shall be one.

Verification of memorandum in special case.

14. Nothing herein contained, or hereby implied or to be done in pursuance of this Act, shall be construed to affect the title of any registered proprietor with notice of any trust, or otherwise to limit the right of any registered proprietor to deal with the estate or interest of which he is registered proprietor for all the purposes of the Real Property Act, as absolute owner, or to defeat, limit, or prejudice any power or discretion vested in the Registrar-General under the Real Property Act, but all such powers and discretions may be exercised by the Registrar-General with reference to proceedings under this Act; and for the purpose of such proceedings this Act shall be incorporated with the Real Property Act, and all persons shall be subject to the provisions thereof.

Preservation of powers of Registrar-General.

15. Nothing herein contained, or hereby implied or to be done in pursuance of this Act, shall release any trustee from any liability for any breach of trust.

Preservation of liability for trustee.

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

KINTORE, Governor.

SCHEDULES.

The Trustees Appointment Act.—1891.

SCHEDULES.

THE FIRST SCHEDULE.

Appointment of New Trustees.

Pursuant to "The Trustees Appointment Act, 1891," we [here set out names, addresses, and occupations], being persons entitled to exercise and exercising the power of appointing new trustees of the trust hereinafter referred to, do hereby appoint [here set out names, addresses, and occupations of new trustees] to be new trustees [here if necessary insert "jointly with"] [here insert names, addresses, and occupations of the old continuing trustees] of the trust constituted under [here set out shortly particulars of the instrument creating the trust, including date and name of persons by whom trust was created], and we the said [here insert names of new trustees] do hereby accept the said trusteeship.

Dated this day of , 18 .

[To be signed by the persons exercising the power of appointment, and by the new trustees, and to be attested.]

THE SECOND SCHEDULE.

Memorandum of the Appointment of New Trustees.

Pursuant to "The Trustees Appointment Act, 1891," it is hereby certified as follows:—

1. The trust is constituted under [here set out shortly particulars of the instrument creating the trust, including date and names of persons by whom trust created].

2. The trust estates consist of [here set out shortly the trust estates, giving particulars sufficient to identify, so far as practicable, and, as regards real estate, giving the last registration, reference, and the estate or interest of the trustees].

3. The names, addresses, and occupations of the trustees on the constitution of the trust (or whichever shall last happen, on the last appointment of trustees, dated the day of , 18) were [here set out names, addresses, and occupations.].

4. The power of appointing new trustees is vested in [here set out persons in whom it is vested] by virtue of the provision in that behalf contained in [here set out where contained. Add, if provision not contained in Act of Parliament] and of which provision the following is a copy [here set out copy].

5. The power of appointing new trustees of the said trust has been lawfully exercised by the persons entitled to exercise the same by the appointment of the new trustees mentioned in the next paragraph.

6. The persons in whom the trust estates will become vested on compliance with the provisions of "The Trustees Appointment Act, 1891," are as follows:—

Firstly.—Old continuing trustees [here set out names, addresses, and occupations of old trustees, if any].

Secondly.—New trustees [here set out names, addresses, and occupations of new trustees].

Dated this day of , 18 .

[To be signed by the persons entitled to make the affidavit or declaration verifying, and to be attested].

THE THIRD SCHEDULE.

We [here set out names, addresses, and occupations of deponents], the persons signing the memorandum of the appointment of new trustees above written (or annexed hereto, as the case may be), severally make oath and swear (or, as the case may be, solemnly and sincerely declare) as follows, that is to say:—

1. The statements contained in the said memorandum are true in every particular.

2. We are [here show authority to make the affidavit or declaration, as, for instance, "the persons entitled to exercise and exercising the power by which the new trustees are appointed."]

[To be signed and severally sworn or declared by all deponents before a justice of the peace.]