



ANNO QUINTO
GEORGI VI REGIS.

A.D. 1941.

No. 49 of 1941.

An Act to amend the Trustee Act, 1936, and for purposes incidental thereto.

[Assented to 27th November, 1941.]

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

Short titles.

1. (1) This Act may be cited as the "Trustee Act Amendment Act, 1941".

(2) The Trustee Act, 1936-1940, as amended by this Act, may be cited as the "Trustee Act, 1936-1941".

(3) The Trustee Act, 1936-1940, is in this Act referred to as "the principal Act".

Incorporation.

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act.

Commencement of Act.

3. This Act shall commence on a day to be fixed by the Governor by proclamation.

Amendment of s. 4 of principal Act—
 Interpretation.

4. Section 4 of the principal Act is amended as follows :—

(a) After the definition of "convey" and "conveyance" the following definition is inserted :—

"equity of redemption" includes—

(a) the right to redeem property which has been conveyed or assigned by way of mortgage :

(b) the estate of the owner of any property which is subject to any legal or equitable mortgage, charge or encumbrance (including a mortgage or encumbrance under The Real Property Act,

1886-1939) created otherwise than by conveyance or assignment of the property.

(b) After the definition of "trust" and "trustee" the following definition is inserted:—

"trustee company" means any incorporated company upon which power to act as a trustee has been conferred by an Act of the Parliament of the State.

5. Section 5 of the principal Act is amended by adding after paragraph (i) of subsection (1) thereof the following paragraphs:—

Amendment of
s. 5 of
principal Act—
Authorized
investments.

(j) in any debentures of The Adelaide Electric Supply Company Limited secured by the trust deed dated the eleventh day of June nineteen hundred and eighteen made between that company of the one part and Electric and General Investment Company Limited of the other part, or otherwise secured by a first charge over the undertaking of The Adelaide Electric Supply Company Limited;

(k) in bonds, mortgages, debentures and other like securities of The South Australian Gas Company.

6. The following sections are enacted and inserted in the principal Act after section 13 thereof and so as to form part of Part I. thereof:—

Enactment of
ss. 13a-13f of
principal Act—

13a. (1) Where a trustee holds a mortgage of any property and has power under this Act or otherwise to invest on mortgage and to vary investments, the trustee—

Release of
part of security
N.S.W. 19,
1925, s. 20.

(a) may release part of the property from the mortgage, whether any part of the mortgage debt is repaid or not, provided that the unreleased part of the property would at the time of the release be a proper investment in all respects for the amount of the mortgage debt then remaining unpaid;

(b) may, on a sale by the mortgagor of part of the mortgaged property and on the receipt by the trustee of the whole of the purchase money thereof after deduction of the expenses of the sale, release that part from the mortgage.

(2) Where the trustee is personally liable to pay the mortgage debt or any part thereof or has any beneficial interest in the property which is subject to the mortgage he shall not be capable of exercising the power conferred by this section, in relation to that mortgage, without the sanction of the Supreme Court.

(3) A purchaser of the released part of the property shall not be concerned to inquire whether the release was authorized by this section.

(4) The exercise by a trustee of any power conferred by this section shall not affect any right of any person who has guaranteed the mortgage debt or any debt for which the mortgage is security, unless that person has consented to the release; and where the mortgage has been sub-mortgaged the power conferred by this section shall not be exercised without the consent of the sub-mortgagee.

(5) This section applies to mortgages created either before or after the commencement of the Trustee Act Amendment Act, 1941.

Power of trustee as to remission of interest and postponement of time for payment.
Cf. Trustee Act (No. 2) 1931, s. 12.

13b. (1) Where a trustee holds a mortgage of any property and any interest payable in respect thereof is in arrears the trustee may in his discretion if he thinks it in the best interest of the trust release from the whole or any part of the liability for such arrears—

- (i.) the person (if any) liable to pay; or
- (ii.) the property subject to the mortgage or any part of that property; or
- (iii.) both.

(2) The trustee may from time to time in his discretion if he thinks it in the best interest of the trust, postpone, without the necessity for any valuation or revaluation of the property subject to the mortgage, the due date or dates for payment of the principal sum or interest or any part thereof. The powers conferred by this subsection may be exercised whether any arrears of principal or interest are owing or not, and either before or after the time when the principal or interest or part thereof becomes due and payable.

(3) Such release or postponement shall be effective in law if made and done by deed or by an instrument registered under The Real Property Act, 1886-1939.

(4) Where the trustee is personally liable to pay any such interest or principal or has any beneficial interest in the property which is subject to the mortgage, he shall not be capable of exercising any power conferred by subsection (1) or subsection (2) of this section in relation to that interest, principal, or property, without the sanction of the Supreme Court.

(5) The rights *inter se* of persons entitled to capital and income respectively shall not be varied by reason of any such release or postponement; and any arrears lost shall be

borne by or apportioned among the person or persons who would have been entitled to them had they been paid or recovered.

(6) The exercise by a trustee of any power conferred by this section shall not affect any right of any person who has guaranteed the mortgage debt or any debt for which the mortgage is security, unless that person has consented to the release; and where the mortgage has been sub-mortgaged the power conferred by this section shall not be exercised without the consent of the sub-mortgagee.

(7) This section applies to mortgages created either before or after the commencement of the Trustee Act Amendment Act, 1941.

13c. (1) Where a trustee holds a mortgage under which interest is payable—

- (a) at a specified rate or at a rate variable from time to time; and
- (b) at a lower rate dependent on interest at such lower rate being paid on or within a fixed period after the due date fixed by the mortgage for payment of interest—

the trustee may in his discretion if he thinks it in the interest of the trust accept any interest at that lower rate notwithstanding payment or tender thereof after the due date or after the period fixed for payment as aforesaid.

(2) The exercise by a trustee of any power conferred by this section shall not affect any right of any person who has guaranteed the mortgage debt or any debt for which the mortgage is security, unless that person has consented to the exercise of the power; and where the mortgage has been sub-mortgaged the power conferred by this section shall not be exercised without the consent of the sub-mortgagee.

(3) This section applies to mortgages created either before or after the commencement of the Trustee Act Amendment Act, 1941.

13d. (1) Where a trustee holds any securities of an incorporated company (whether incorporated in the State or elsewhere) and the trustee can lawfully hold or retain them, the trustee may, in like manner as if he were beneficially entitled to the securities, concur in any scheme or arrangement—

- (a) for the reconstruction of the company;
- (b) for the amalgamation of the company with any other company;

Acceptance of lower rate of interest where payment overdue.

Power of trustee as to amalgamations and reconstructions of company.
U.K. 15, Geo. 5, c. 19, s. 10 (3).
N.S.W. 14, 1925, s. 21

(c) for the sale of all or any part of the property and undertaking of the company to any other company ;

(d) for the release modification or variation of any rights privileges or liabilities attached to the security.

(2) In lieu of or in exchange for the securities the trustee may accept any securities of any denomination or description of the reconstructed or new or purchasing company.

(3) The trustee shall not be responsible for any loss occasioned by any act or thing so done reasonably and in good faith, and may retain any security so accepted in like manner as he could have done if that security had been an investment authorized by the instrument, if any, creating the trust or by law.

(4) The powers conferred by this section shall not be exercised without the consent of any person whose consent to a change of investment is required by the instrument, if any, creating the trust or by law, or without the consent of any other person who, otherwise than as a beneficiary under the trust, has any interest in the securities, of which interest the trustee has notice.

(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 the provisions therein contained.

(6) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

13e. (1) Where a trustee holds any securities of an incorporated company, and by virtue of such holding is offered a preferential right to subscribe for securities in the company he may—

(a) exercise the right and apply capital money subject to the same trust in payment of the consideration and continue to hold the securities subscribed for ; or

(b) renounce the right ; or

(c) assign the benefit of the right for the best consideration that can reasonably be obtained to any person, including a beneficiary under the trust.

(2) Where a trustee assigns the benefit of the right the consideration received by him for the assignment shall be held as capital money of the trust.

(3) The trustee shall not be responsible for any loss occasioned by any act done reasonably and in good faith in exercise of his powers under this section.

Power of trustee as to new shares in company.
U.K. 15, Geo. 5,
c. 19, s. 10 (4).
N.S.W. 14,
1925, s. 22.

(4) The powers conferred by this section shall not be exercised without the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(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 the provisions therein contained.

(6) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

13f. (1) A trustee may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust. Where the trustee is a trustee company, it may exercise the powers conferred by this section notwithstanding that the shares on which the calls are made are shares in the trustee company.

Power of trustee as to calls on shares. U.K. 16, Geo. 5, c. 19, s. 11 (2). N.S.W. 14, 1925, s. 23.

(2) 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.

(3) The trustee shall not be responsible for any loss occasioned by any act done in good faith in the exercise of his powers under this section.

(4) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

7. Section 14 of the principal Act is amended as follows :—

Amendment of s. 14 of principal Act—
Appointment of new trustees.

(a) The word “another” in the thirteenth line of subsection (1) is struck out and the word “a” substituted therefor, and the word “other” in the same line is struck out.

(b) After subsection (1) the following subsection is inserted :—

(1a) The person, or any of the persons, by whom or with whose consent the appointment of a new or additional trustee is required to be made, may appoint himself or, as the case may be, consent to the appointment of himself as a new or additional trustee.

(c) After the word “trust” in the last line of paragraph (c) of subsection (2) the following words are inserted :

Provided that the Public Trustee or a trustee company may, irrespective of the original number of trustees, be appointed as a sole new trustee and the

original trustee or trustees shall thereupon be discharged from the trust. Notwithstanding any other Act it shall not be necessary to obtain the consent of the Supreme Court to an appointment of the Public Trustee under this section.

Enactment of
s. 14a of
principal
Act—

8. The following section is enacted and inserted in the principal Act after section 14 thereof :—

Appointment
of separate
trustees.

14a. (1) Where trustees or a sole trustee or the representatives of the last surviving or continuing trustee deem it expedient that a separate set of trustees or a separate sole trustee should be appointed for any part of the trust property held on trusts distinct from those relating to any other part of the trust property, 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 trustees for the time being or the representatives of the last surviving or continuing trustee, may by writing appoint—

- (a) a separate set of trustees for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property ; or
- (b) if only one trustee was originally appointed, a separate sole trustee for the first mentioned part of the trust property.

(2) When the appointment of a separate trustee is required to be made by, or with the consent of a person other than a trustee of the trust property, that person may appoint himself or, as the case may be, consent to the appointment of himself as a separate trustee or as one of a set of separate trustees.

In this subsection the words “beneficiary” and “beneficiaries” mean the person or persons having a beneficial interest in the property held on distinct trusts as aforesaid.

(3) Where two or more trustees were originally appointed the number of separate trustees shall be not less than two :

Provided that the Public Trustee or a trustee company may in any case and irrespective of the original number of trustees be appointed as a sole separate trustee. Notwithstanding any other Act it shall not be necessary to obtain the consent of the Supreme Court to an appointment of the Public Trustee under this section.

(4) On the appointment of a separate set of trustees or a separate trustee any assurance or thing requisite for vesting the trust property or any part thereof jointly in the separate trustees or solely in the separate trustee, as the case may require, shall be executed or done.

(5) Every trustee appointed under this section, as well before as after the part of the trust property for which he is appointed becomes by law or by assurance or otherwise vested in him shall have in relation to that part of the trust property the same powers, authorities and discretion and may in all respects act as if he had been originally appointed trustee by the instrument, if any, creating the trust. Where the original trustee or trustees were entitled to remuneration, the remuneration of the separate trustee or trustees shall be calculated on the value of the part of the trust property for which he is or they are appointed.

(6) The provisions of this section relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the provisions of this section.

(7) 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.

(8) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

(9) Nothing in this section shall give power to appoint an executor or administrator.

9. The following section is enacted and inserted in the principal Act after section 19 thereof:—

Enactment of
s. 19a of
principal
Act—

19a. (1) Where two or more persons in a fiduciary position (other than trustees under a will, settlement or other instrument) have deposited with a banker moneys which have been received by them as such fiduciaries, it shall be lawful for the banker, when so authorized by those persons—

Power of
fiduciaries as to
cheques.

(a) to pay cheques drawn on the banker by any one or more of them or by any agent authorized by them:

(b) to recognize as a valid indorsement upon any bill of exchange or promissory note payable to the order of such persons, an indorsement by any one or more of them or by any agent authorized by them.

(2) Where any person in a fiduciary position (other than a trustee under a will, settlement or other instrument) has deposited with a banker moneys which have been received by him as such fiduciary, it shall be lawful for the banker when so authorized by that person—

(a) to pay cheques drawn on the banker by any agent authorized by the said person :

(b) to recognize as a valid indorsement on any bill of exchange or promissory note payable to the order of the said person an indorsement by any agent authorized by him.

(3) Nothing in this section contained shall affect any liability of any person in a fiduciary position to any person towards whom he is in a fiduciary position.

(4) This section shall not be construed so as to limit in any way the operation of section 19.

Amendment of
s. 20 of
principal Act—

10. Section 20 of the principal Act is amended by inserting after subsection (2) thereof the following subsection :—

Power of
trustee to set
apart roads
and reserves.

(2a) Where the property sold or offered for sale is land the trustees may set apart or dedicate any land being portion of the trust property as roads, streets, passages, thoroughfares, squares, gardens, and reserves and for such purposes may without receiving any consideration vest the land comprising such roads, streets, passages, thoroughfares, squares, gardens and reserves in the Crown or any municipal corporation, municipal council, district council or in any public authority or other person, to be held by the Crown or the corporation, council, public authority or person for the purpose for which it was set apart.

Enactment of
ss. 23a-23c of
principal Act—

11. The following sections are enacted and inserted in the principal Act after section 23 thereof :—

Deferred
payment on
sale of land.
N.S.W. 14,
1925, s. 28.

23a. (1) A trustee for sale may sell land on terms of deferred payment or otherwise.

(2) The terms of deferred payment may provide either for the purchase money being paid by instalments, or for the unpaid purchase money being secured by mortgage.

(3) If the purchase money is to be paid by instalments, the terms upon which the land is sold shall, in addition to such other provisions as the trustee deems proper, include provisions for giving effect to the following :—

(a) That part of the purchase money shall be paid on the execution of the contract of sale ;

- (b) That the balance of the purchase money shall be payable in instalments, the first not later than three years from the date of the contract of sale and the others at intervals of not more than a year beginning from the date on which the first instalment is payable, and shall bear interest payable half-yearly or oftener on the amount from time to time unpaid ;
 - (c) That the whole of the purchase money and interest shall be payable within a period not exceeding ten years from the date of the contract of sale ;
 - (d) That if any instalment or interest or part thereof is in arrear and unpaid for six months or for such less period as may be specified, the whole of the purchase money and interest thereon calculated up to the day of payment shall become due and payable ;
 - (e) That the purchaser will maintain and protect the land and all buildings (if any) thereon and keep all such buildings insured against loss or damage by fire to the full insurable value thereof.
- (4) If the unpaid purchase money is to be secured by mortgage, the terms upon which the land is sold shall, in addition to such other provisions as the trustee deems proper, include provisions for giving effect to the following :—
- (a) That part of the purchase money shall be paid on the execution of the contract of sale ;
 - (b) That the unpaid purchase money shall be secured by a registered mortgage of the land sold, with or without the security of any other property, and shall bear interest payable half-yearly or oftener on the amount from time to time unpaid;
 - (c) That the mortgage shall contain covenants by the mortgagor to pay the principal money secured and the interest thereon, to maintain and protect the property, and to keep all buildings, if any, thereon insured against loss or damage by fire to the full insurable value thereof.
- (5) Whether the purchase money is to be paid by instalments or the unpaid purchase money is to be secured by mortgage the trustee shall not be deemed to be lending money within the meaning of section 10 of this Act so as to be bound to act in accordance with the provisions of that section, and shall not be liable for any loss which may be incurred by reason only of the fact that the part of the purchase money to be paid by instalments or secured by mortgage is insufficiently secured.

(6) The part of the purchase money to be paid on the execution of the contract of sale shall not be less than the sum which a person acting with prudence would, if the land were his own, have accepted in the circumstances in order to sell the land to the best advantage.

(7) The trustee shall not be bound to require payment of any greater part of the purchase money before letting the purchaser into possession, or before conveying the land and taking a mortgage back, than a person acting with prudence would, if the land were his own, have considered sufficient: Provided that the trustee shall not convey the land and take a mortgage back until at least one-tenth of the purchase money has been paid.

(8) Notwithstanding that the purchase money is to be paid by instalments, the trustee may at any time after one-tenth of the purchase money has been paid convey the land and take a mortgage back in any case where a person acting with prudence would, if the land were his own, have been willing in the circumstances to do so; and in any such case the mortgage shall be in accordance with paragraphs (b) and (c) of subsection (4) of this section, and the provisions of subsection (5) of this section shall apply to it.

(9) Any mortgage under this section may be for any period not exceeding ten years from the date of the contract of sale.

(10) The trustee may, on such terms, if any, as he deems proper by writing waive or vary any right arising from failure to comply with any term of the contract of sale or of any mortgage under this section within the proper time, and may exercise in relation to any such mortgage or agreement any of the powers conferred by sections 13a, 13b, and 13c of this Act.

(11) Where the sum payable under or secured by any such agreement or mortgage (being an agreement or mortgage of or in respect of real property whether freehold or leasehold) does not exceed two-thirds of the whole purchase price, or has been reduced by payment to an amount not exceeding two-thirds of the whole purchase price, that agreement or mortgage, as the case may be, may be held and dealt with by the trustee as though it were an investment authorized by law.

(12) Where the sale is made under the order of the Supreme Court, the provisions of this section shall apply, unless the Supreme Court, or, on any reference to the Master, the Master shall otherwise direct.

(13) 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.

(14) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

23b. (1) Where any property which has been mortgaged to a trustee becomes vested in the trustee discharged from the equity of redemption, the trustee shall hold the property as an authorized investment on trust for sale, with power to postpone the sale for such a period as he may think proper.

Sale after right of redemption barred.

N.S.W. 14, 1925, s. 33.

U.K. 15, Geo. 5, c. 20, s. 31.

(2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable.

(3) This section shall not affect any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

(4) This section shall not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions, or any power of the trustee to appropriate the property in specie to any beneficiary.

(5) This section applies whether the property is discharged from the equity of redemption by virtue of the statutes of limitation or an order for foreclosure or the purchase of the equity of redemption or otherwise.

23c. A trustee unless expressly forbidden by the instrument, if any, creating the trust, in lieu of proceeding to foreclosure may with moneys held upon the same trusts as the mortgage debt purchase the equity of redemption of land in the State the subject of a mortgage held by the trustee under which default has been made: Provided that—

Power to purchase equity of redemption in lieu of foreclosure.

Cf. N.S.W. 14, 1925, s. 32a.

- (a) before purchasing any such equity of redemption the trustee shall obtain a report as to the value thereof from a person whom the trustee reasonably believes to be competent to give a report upon that value, and who is employed independently of the owner of the equity of redemption; and
- (b) the price paid for the equity of redemption shall not be more than the value thereof as so reported to the trustee.

Repeal of s. 25
of principal Act
and substi-
tution of ss.
25-25c.

Powers of
trustee as to
insurance.
N.S.W. 14,
1925, ss. 41, 42.
Cf. U.K. 15,
Geo. 5, c. 19,
ss. 19, 20.

12. Section 25 of the principal Act is repealed and the following sections are enacted and substituted in lieu thereof:—

25. (1) A trustee may insure any building or other insurable property against loss or damage whether by fire or otherwise and against any risk or liability against which it would be prudent for a person to insure if he were acting for himself.

(2) The amount for which any property is insured (including any amount of insurance already on foot) shall not exceed the full value of the property: Provided that the full value shall not be limited for the purposes of this section to the sale value of the property but shall include the replacement cost as at times material as well as indemnity against loss of rent and other collateral risks.

(3) A trustee may pay the premiums for such insurance out of any income from the property insured or out of the income of any other property subject to the same trusts, without obtaining the consent of any person, notwithstanding that there may be a person entitled wholly or partly to such income.

(4) If there is no such income or to the extent to which such income is deficient (for which purpose all other outgoings payable from such income whether discretionary or not may be brought into account by the trustee) the trustee may borrow the necessary money for paying the premiums and may give security over the property insured or over any other property subject to the same trusts. The principal of the money so borrowed and the interest thereon shall be repaid out of any income from the property insured or out of the income of any other property subject to the same trusts, if there is any such income available for the purpose; and if there is no such income, or if such income is insufficient, the said principal and interest, or, as the case may be, that part of the said principal and interest which is in excess of the income available for payment thereof, shall be repaid out of the capital of any property subject to the same trusts.

(5) Where a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, has been kept up under any trust in that behalf, or under any power statutory or otherwise, or in performance of any obligation statutory or otherwise, the money receivable by a trustee under the policy shall except to the extent to which it is receivable in respect of loss of rent or other collateral risk as aforesaid, be capital money for the purposes of the trust.

(6) If the money is receivable in respect of property held upon trust for sale, it shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under the trust.

(7) In any other case the money shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was receivable.

(8) Notwithstanding subsection (6) of this section, and whether the property in respect of which the money is receivable is held upon trust for sale or not, the money or any part thereof may also be applied by the trustee, or, if in Court, under the direction of the Court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged.

(9) Any such application by the trustee shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(10) Nothing in this section shall prejudice or affect the right of any person to require the money or part thereof to be applied in rebuilding, reinstating or repairing the property lost or damaged.

(11) Nothing in this section shall prejudice or affect the rights of any mortgagee lessor or lessee, whether under any statute or otherwise.

(12) 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.

(13) This section applies to trusts created and to policies issued either before or after the commencement of the Trustee Act Amendment Act, 1941, but only to money received after that commencement.

25a. (1) Unless prohibited by the terms of the trust the trustee at his discretion may—

(a) execute or cause to be executed all repairs to any buildings erections or fixtures being part of the trust property which repairs in the opinion of the trustee are necessary or proper for the preservation of the buildings erections or fixtures or to render them tenantable :

(b) pay and satisfy all rates taxes charges assessments or impositions (including arrears) assessed or imposed on or in respect of the trust property or any part thereof whether payable by the landlord or tenant or owner or occupier in respect thereof :

Repairs to
trust property.
Cf. N.S.W. 14,
1925, s. 82.

- (c) pay the moneys required for the purposes mentioned in paragraphs (a) and (b) out of any moneys whether capital or income which are subject to the same trusts as the property repaired or in respect whereof the said rates taxes charges assessments or impositions are paid:
- (d) debit the moneys so paid to capital or income or adjust the same between capital and income in such manner as to the trustee shall seem equitable.

(2) Upon the application of an interested party of which application notice shall be given to the trustee and to such other parties as the Supreme Court may think to have a sufficient interest in the subject matter of the application, the Supreme Court in its discretion may review any such debit or adjustment and may direct how the payments made as aforesaid shall be borne between the parties interested in the trust property. On any such application there shall be no presumption that the trustee has exercised his discretion under paragraph (d) of subsection (1) of this section properly.

(3) On the application of the trustee, of which notice shall be given to the person intended to be affected, the Supreme Court may in its discretion order that the whole or any portion of the moneys paid by the trustee under this section shall be paid by any beneficiary under the trust who the court in its discretion thinks should be made personally liable therefor.

(4) Nothing in this section shall relieve a trustee from any liability in respect of any breach of trust: Provided that a trustee shall not be liable for any breach of trust because of an honest although erroneous exercise of discretion under paragraph (d) of subsection (1) of this section.

25b. (1) The Supreme Court may on the application *ex parte* or otherwise of a trustee or of a beneficiary interested in the trust property authorize or direct the expenditure by the trustee of such sum or sums as the court thinks fit out of the capital or income of the trust property or both or out of any part or parts thereof in and for building or rebuilding or repairing, reinstating, altering, adding to or in any way improving the trust property or any part thereof.

(2) If there is no ready money available for the said purposes or to the extent that the ready money is insufficient, the Supreme Court may authorize or direct

the trustee to sell any part of the trust property or to raise money upon loan by mortgage of the whole or any part or parts of the trust property for the purpose of securing such loans or otherwise and in either case upon or subject to such terms and conditions as the Court may by order authorize or direct.

(3) The Supreme Court may give directions for the debiting of the expenditure (including the costs of the application to the court) incurred for the purposes of this section to capital or income or for the adjustment of the same between capital and income in such manner as the Court in its discretion thinks just.

(4) 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.

(5) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941 ; but nothing in this section shall authorize the 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.

25c. (1) A trustee may make a lease of land in possession in any of the following cases, that is to say—

Power of trustee as to granting leases. N.S.W. 14, 1925, s. 36.

(a) where he holds the land with power to manage it, or upon trust for sale with an express power to postpone the sale, the lease may be for any term not exceeding ten years ;

(b) where he holds the land without power to manage it, or upon trust for sale, without any express power to postpone the sale, the lease may be for any term not exceeding five years.

(2) A trustee shall not be deemed to hold land with power to manage it within the meaning of this section by reason only of the fact that it is proper to postpone the sale in order to sell to the best advantage and in the meantime to manage the land.

(3) Any lease which a trustee is authorized to make under this section or under the instrument, if any, creating the trust or power may—

(a) provide for a rent increasing at such times as are specified in the lease ;

(b) give an option of renewal, provided that the duration of the lease and any such renewal shall not in the aggregate exceed the term for which the trustee is authorized to make the lease.

(4) If the land is the subject of a settlement within the meaning of The Settled Estates Act, 1880, and there is any other person authorized by the settlement or by that Act to demise the land or any part thereof, this section shall not apply unless that person in writing authorizes the trustee to make the lease.

(5) This section shall not apply to a bare trustee, where the beneficiary, or all the beneficiaries (if more than one) is or are entitled in possession and free of any incapacity.

(6) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(7) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

Enactment of
s. 26 of
principal Act—

Power to
surrender leases
with onerous
covenants.
N.S.W. 14,
1925, s. 35.

13. The following section is enacted and inserted in the principal Act after section 26 thereof:—

26a. (1) Where a lease is vested in a trustee or in a trustee with others and the lease or the property comprised in the lease is subject to onerous covenants or obligations of such a nature that it would not be in the interests of the beneficiaries to retain the property, the trustee may surrender or concur in surrendering the lease.

(2) A trustee may, in respect of any lease, exercise any power conferred on trustees by this section, notwithstanding that the reversion of the lease is vested in him or in him with others as trustee or trustees under a different trust.

(3) Where the trustee has acted in good faith and on the advice of a person whom he reasonably believed to be a competent valuer instructed and employed independently of the lessor whether the valuer carried on business in the locality where the property is situate or elsewhere, the trustee shall not be chargeable with breach of trust nor shall the surrender be impeached by any beneficiary upon the ground only that the covenants or obligations were not of the nature mentioned in subsection (1) of this section.

(4) Any person who acquires *bona fide* for value any estate or interest in the property previously subject to such lease shall not be concerned to inquire whether the surrender was authorized by this section.

(5) This section applies whether the leasehold vested in the trustee before or after the commencement of the Trustee Act Amendment Act, 1941.

14. The following sections are enacted and inserted in the principal Act after section 28 thereof:—

Enactment of ss. 28a-28c of principal Act—

28a. (1) Where an equity of redemption is vested in a trustee and the mortgaged property is not of greater value than the amount of the mortgage debt, the trustee may release the equity of redemption to the mortgagee in discharge of the mortgage debt or part thereof.

Power to release equity of redemption in satisfaction of mortgage debt.

N.S.W. 14, 1925, s. 34.

(2) The trustee shall not be chargeable with breach of trust nor shall the release be impeached by any beneficiary upon the ground only that the mortgaged property was of greater value than the amount of the mortgage debt or of the part thereof discharged, provided that the trustee has acted in good faith and on the advice of a person whom he reasonably believed to be a competent valuer instructed and employed independently of the mortgagee, whether the valuer carried on business in the locality where the property is situate or elsewhere.

(3) This section applies whether the equity of redemption vested in the trustee before or after the commencement of the Trustee Act Amendment Act, 1941.

28b. (1) Where a trustee is authorized by the instrument, if any, creating the trust or by law to pay or apply capital money for any purpose or in any manner, he shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession held upon the same trusts as the capital money.

General power of trustee to raise money.
U.K. 15, Geo. 5,
c. 19, s. 16.
N.S.W. 14,
1925, s. 38.

(2) Where a trustee holds land in respect of which moneys are due and payable for rates or taxes or in respect of which the trustee is under a statutory obligation to expend moneys and the trustee has no moneys subject to the same trusts as such land wherewith to pay such rates or taxes or discharge such statutory obligation the trustee shall have and shall be deemed always to have had power to raise the money required to make such payment or discharge such obligation by sale or mortgage

of the whole or part of such land or by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession held upon the same trusts as such land.

(3) This section shall apply notwithstanding anything to the contrary contained in the instrument, if any, creating the trust but shall not apply to a trustee of property held for charitable purposes.

(4) This section applies to trusts created either before or after the commencement of The Trustee Act Amendment Act 1941.

Application of
income by
trustee-
mortgagee in
possession.

28c. (1) Where a trustee is entitled whether severally or as a co-mortgagee to a debt secured by a mortgage of land in trust as to the whole or part of such debt for persons by way of succession, and such trustee is at the commencement of the Trustee Act Amendment Act, 1941, or at any time after such commencement becomes mortgagee in possession of the mortgaged land, the trustee shall apply the net income of the mortgaged land received by him after such commencement or after he becomes mortgagee in possession, as the case may be, as follows, namely—

- (a) in discharge of all rents, taxes, rates and outgoings affecting the mortgaged land ;
- (b) in payment of the premiums on any insurances properly payable under the mortgage instrument or under the Trustee Act Amendment Act, 1941, and the cost of executing necessary repairs ;
- (c) in keeping down all periodical payments whether of principal or interest charged upon the mortgaged land and having priority to the mortgage in right whereof he is in possession.

Subject to the rights of the mortgagor such trustee shall hold the residue of the income so received by him upon the trusts to which such mortgage debt is subject.

(2) The rents, taxes, rates, outgoings, premiums, costs, annual sums, payments and interest so to be discharged, kept down and paid shall be those accruing due—

- (a) after the commencement of the Trustee Act Amendment Act, 1941, where the trustee is in

possession of the mortgaged land at such commencement ;

- (b) after the date of possession by the trustee, where the entry into possession is after the commencement of the Trustee Act Amendment Act, 1941 :

Provided that if at the commencement of the Trustee Act Amendment Act, 1941, or on the date of possession by the trustee, as the case may be, any rents, taxes, rates, outgoings, annual sums, payments, interest or premiums mentioned in paragraphs (a), (b) or (c) of subsection (1) of this section were or are due and unpaid, and such of those rents, taxes, rates, outgoings, annual sums, payments and premiums as are periodical payments, were payable wholly or in part in respect of any period subsequent to such commencement or to such date of possession, as the case may be, then such last mentioned rents, taxes, rates, outgoings, annual sums, payments and premiums shall, for the purpose of this section, be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

(3) On the recovery of the moneys secured by the mortgage whether in whole or in part, and whether by repayment or on realization of the security or otherwise, such part of the income applied by the trustee in the payments specified in paragraph (a), (b), and (c) of subsection (1) of this section as would otherwise have been payable as interest to the person entitled to the interest of the mortgage debt shall as between the persons respectively entitled to the income and capital of the mortgage debt be deemed to be arrears of interest and the amount received by the trustee shall be apportioned accordingly.

(4) Notwithstanding anything in this section contained, the trustee may, if in the administration of the trust he deems it necessary so to do, apply income of the mortgaged property received by him after the commencement of the Trustee Act Amendment Act, 1941, in payment of any rents, taxes, rates, outgoings, premiums, costs, annual sums, payments and interest affecting the mortgaged land other than those specified in subsection (2) of this section but the person entitled to the interest on the mortgage debt shall be entitled to recoupment out of the capital of the mortgage debt of all payments made by the trustee under the authority conferred by this subsection.

Repeal of ss. 30
and 31 of
principal Act
and re-enact-
ment thereof—

Liability of
trustee in
respect of rents,
covenants, etc.
Vict. 3792,
1928, s. 26.
U.K. 15, Geo. 5,
c. 19, s. 26.

15. Sections 30 and 31 of the principal Act are repealed and the following sections are enacted and inserted in lieu thereof :—

30. (1) Where a trustee liable as such under any instrument or agreement entered into before the creation of the trust or before the trust became operative for or in respect of—

- (a) any rent, covenant or agreement reserved by or contained in any lease ; or
- (b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge ; or
- (c) any indemnity given in respect of any such rent covenant or agreement

satisfies all liabilities under the lease or grant which have accrued and been claimed as against him up to the date of the conveyance hereinafter mentioned, and where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed or ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out that sum may not have arrived, then and in any such case the trustee may convey the property demised or granted, to a purchaser, legatee, devisee or other person entitled to call for conveyance thereof, and thereafter—

- (i.) he may distribute the estate or the residue of the estate other than the fund (if any) set apart as aforesaid as the case may be to or amongst the persons entitled thereto without appropriating any part, or any further part, of the estate to meet any future liability under the said lease or grant;
- (ii.) notwithstanding such distribution he shall not be personally liable in respect of any claim that may be subsequently made under the said lease or grant except a claim for application of the fund set apart.

(2) This section shall not—

- (a) affect the right to follow assets into the hands of any person or persons to or amongst whom the assets may have been transferred or distributed for the purpose of recovering payment of any amount for which the trustee is liable as mentioned in sub-paragraphs (a), (b) and (c) of subsection (1) of this section :
- (b) apply where the trustee is himself an original party to such lease grant or indemnity or a party otherwise than as trustee.

(3) This section applies notwithstanding anything to the contrary in the will or other instrument if any creating the trust.

(4) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

(5) In this section—

“lease” includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease or underlease :

“grant” includes a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant :

“lessee” and “grantee” include persons respectively deriving titles under them.

31. (1) Where trust property includes shares not fully paid up in any company in respect of which there is a contingent liability to contribute, then so soon as the trustee has procured registration of those shares in the name of some other person he may transfer and distribute the trust property without retaining any portion thereof for payment of calls made on those shares after the date of the registration whether made by the company or its directors or by its liquidator in a winding up or by a receiver or manager on behalf of the holders of any debenture or otherwise, and the trustee shall not in such case be personally liable to pay any call after the registration except to the extent of trust property which, at the time when the call is made remains, or should in the due course of administration have remained, in his hands and is, or should have been, available for paying such calls.

Shares with
contingent
liability.
Vict. 3792,
1928, s. 28.

(2) This section shall not affect the right to follow assets into the hands of any person or persons to or amongst whom the assets may have been transferred or distributed for the purposes of recovering payment of any such call.

(3) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

Repeal of s. 33
and enactment
of ss. 33 and
33a of
principal Act—
Powers of
trustees as to
maintenance
and accumu-
lation.
Cf. N.S.W. 14,
1925, s. 43.

16. Section 33 of the principal Act is repealed and the following sections are enacted and substituted therefor :—

33. (1) Where property is held in trust for any person—

- (a) who is for the time being an infant ; or
- (b) subject to his attaining a specified age ; or
- (c) contingently upon the happening of any event,

the trustee may in his discretion—

- (i.) in the case of an infant, pay to the parent or guardian of the infant or to the person having the custody or control of the infant or otherwise apply for or towards the maintenance, education, benefit or advancement of the infant ; or
- (ii.) in the case of any beneficiary not an infant, pay to that beneficiary or on his behalf or for his maintenance or benefit or to some person (selected or approved by the trustee)

the whole or any part of the income of the property held in trust as aforesaid.

(2) The power conferred by this section may be exercised at any time or from time to time in the discretion of the trustee and whether there is any other property or fund applicable for the same purpose or any person bound by law to provide and capable of providing for such infant or beneficiary or not.

(3) The power conferred by this section shall not be capable of being exercised so as to prejudice any interest in or charge over the property which is prior to that of the infant or other beneficiary : Provided that where the interest of the infant or other beneficiary is not vested, and would not apart from the power given by this section permit any participation in the intermediate income, but such intermediate income is not specially disposed of and would pass to some other person only under a residuary or general gift of property in the instrument (if any) creating the trust or in the absence of such gift as upon intestacy or as upon a resulting trust, then the intermediate income shall be available for the exercise of the power given by this section and the interest of such person as lastly mentioned in the intermediate income shall not be deemed prior to that of the infant or other beneficiary for the purposes of this section.

(4) To the extent that the intermediate income is not paid or applied pursuant to the power conferred by this section or otherwise the trustee may accumulate that income within the limits allowed by law by investing it and the income resulting therefrom from time to time in securities authorized by law or by the trust instrument (if any).

(5) Such accumulations of income may in any year be paid or applied pursuant to the powers conferred by this section as if they were income arising in that year.

(6) Notwithstanding that an infant or other beneficiary may participate in intermediate income by reason of the exercise of the power conferred by this section the trustee shall hold the accumulations or the residue thereof as an accretion to the corpus of the property from which the accumulations arose as one fund therewith for all purposes other than those hereinbefore particularized.

(7) This section shall be deemed to apply to a vested annuity as if the annuity were income of property held by a trustee upon trust to pay that income to the annuitant for the same period as that for which the annuity is payable save that in any case accumulations as hereinbefore provided shall be held in trust for the annuitant absolutely.

(8) 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.

(9) This section only applies where the trust was created after the commencement of the Trustee Act Amendment Act, 1941.

33a. (1) Where under a trust a person is entitled to the capital of the trust property or any share thereof, the trustee may from time to time pay or apply any capital money subject to the trust, not exceeding altogether in amount one half of the value of the property or share for the advancement, maintenance, education, or benefit of such person in such manner as the trustee shall in his absolute discretion think fit.

Power to apply capital towards advancement and benefit.
N.S.W. 14, 1925, s. 44.
U.K. 15, Geo. 5, c. 19, s. 32.

(2) The power conferred by this section may be exercised whether the person is entitled absolutely or contingently on his attaining any specified age or on the happening of any event, or whether his interest is subject to a gift over on his death under any specified age or on the happening of any other event, and notwithstanding that the interest of the person so entitled is liable to be defeated by the

exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs or whether the person is entitled in possession or in remainder or reversion.

(3) If the person is or becomes absolutely and indefeasibly entitled to a share in the trust property, the money so paid or applied for his advancement, maintenance, education or benefit shall be brought into account as part of such share.

(4) No such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied, unless such person is in existence and under no disability and consents in writing to the payment or application.

(5) This section applies only where the trust property consists of money or securities or property held upon trust for sale calling in and conversion, and the money or securities or the proceeds of the sale calling in and conversion are not by statute or in equity considered as land.

(6) This section applies only and 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.

(7) This section only applies where the trust was created after the commencement of the Trustee Act Amendment Act, 1941.

Amendment of
s. 34 of
principal Act—
Powers of
attorney.

17. Section 34 of the principal Act is amended—

- (a) by inserting after the word "dead" in the fifth line thereof the words "subject to any disability or bankrupt"; and
- (b) by inserting at the end thereof the following additional proviso:—
- (c) where the power of attorney is registered and deposited under the Registration of Deeds Act, 1935, nothing in this section shall apply to any act done or payment made by a trustee after a memorandum of notice of revocation of the power has been entered by the Registrar-General of Deeds in the memorial of such power.

18. The following section is enacted and inserted in the principal Act after section 34 thereof :—

Enactment of
s. 34a of
principal Act—

34a. (1) A trustee acting for the purpose of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Notice where
trustee acts in
two or more
trusts.

Vict. 3792,
1928, s. 29.

U.K. 15, Geo. 5,
c. 19, s. 28.

(2) This section applies whether the trusts were created before or after the commencement of the Trustee Act Amendment Act, 1941.

19. The following section is enacted and inserted in the principal Act after section 35 thereof :—

Enactment of
s. 36a of
principal Act—

35a. (1) A trustee may set aside and invest the amount of any pecuniary bequest in any investments authorized by law or by the will or codicil of the testator and thereafter the investments so made or the proceeds thereof and the interest or other income arising therefrom shall be taken in full satisfaction and discharge of such bequest and all persons interested or entitled or who may become interested or entitled to the estate of the testator or any part thereof shall be bound by such setting aside and investment and any gain or loss consequent thereupon shall accrue to or be borne by the persons interested or entitled or who shall become interested or entitled to such legacy and the interest or income arising therefrom according to their respective rights or interests.

Investment of
pecuniary
bequest.

N.S.W. 1925,
s. 48.

(2) A trustee may set aside and invest in any investments authorized by law or by the trust instrument a fund to answer an annuity or annuities by means of the income of the fund or otherwise, provided that at the time of appropriation the fund would be sufficient if it were invested in Government securities of the Commonwealth of Australia at par to provide an income exceeding the annuity or annuities by at least twenty-five per centum thereof and thereafter the annuitant or annuitants shall be limited to the income or if the annuity or annuities were originally payable out of or charged upon corpus the income and corpus of the fund so set apart and the trustee shall not be personally liable for the deficiency of any such annuity over and above the income or the corpus and income of such fund as the case may be.

(3) A trustee shall have power from time to time to transpose any investments made under this section for other like investments.

(4) This section applies only if or to the extent a contrary intention is not expressed in the instrument (if any) creating the trust.

(5) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

Enactment of
s. 59a and 59b
of principal
Act—

Investigation
and audit of
trust accounts.

20. The following sections are enacted and inserted in the principal Act after section 59 thereof :—

59a. (1) In this section—

“Public Trustee” means the person for the time being holding office or acting as Public Trustee under the statutes for the time being in force regulating the powers and duties of the Public Trustee :

“rules” means rules of the Supreme Court prescribing the practice and procedure under this section.

(2) Subject to the rules and unless the Supreme Court otherwise orders, the condition and accounts of any trust shall, on an application being made and notice thereof given to the persons and in the manner prescribed in the rules by any trustee or beneficiary, be investigated and audited by such solicitor or public accountant as may be agreed on by the applicant and the trustees or, in default of agreement, by a solicitor or public accountant nominated by the Public Trustee :

Provided that—

(a) except with the leave of the Supreme Court such an investigation or audit shall not be required within twelve months after any such previous investigation or audit ; and

(b) a trustee or beneficiary shall not be appointed under this section to make an investigation or audit.

(3) The person making the investigation or audit (hereinafter called the auditor)—

(a) shall have a right of access to the books, accounts and vouchers of the trustees, and to any securities and documents of title held by them on account of the trust, and may require from them such information and explanation as may be necessary for the performance of his duties ; and

(b) upon the completion of the investigation and audit shall forward to the applicant and to every

trustee a copy of the accounts, together with a report thereon, and a certificate signed by him to the effect that the accounts exhibit a true view of the state of the affairs of the trust and that he has had the securities of the trust fund investments produced to and verified by him or (as the case may be) that such accounts are deficient in such respects as may be specified in such certificate.

(4) Every beneficiary under the trust shall, subject to the rules, be entitled at all reasonable times to inspect and take copies of the accounts, report, and certificate, and, at his own expense, to be furnished with copies thereof or extracts therefrom.

(5) The auditor may be removed by order of the Supreme Court, and, if any auditor is removed, or resigns, or dies, or becomes bankrupt or incapable of acting before the investigation and audit is completed, a new auditor may be appointed in his place in like manner as the original auditor.

(6) The remuneration of the auditor and the other expenses of the investigation and audit shall be such as are prescribed by the rules, and shall, unless the Supreme Court otherwise orders, be borne by the estate; and, if the Supreme Court directs that the said expenses shall not be borne by the estate, it may order that such expenses be borne by the applicant or by the trustees personally or partly by the trustees and partly by the applicant.

(7) If any person having the custody of any documents to which the auditor has a right of access under this section fails or refuses to allow him to have access thereto or in anywise obstructs the investigation or audit, the auditor may apply to the Supreme Court, and thereupon that Court shall make such order as it thinks just.

(8) Subject to the rules, applications under or for the purposes of this section to the Supreme Court shall be made to a judge in Chambers.

(9) If any person in any statement of accounts, report, or certificate required for the purposes of this section wilfully makes a statement false in any material particular, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, and in either case to a fine not exceeding one hundred pounds in lieu of or in addition to such imprisonment.

(10) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

Advantageous
dealings.
N.S.W. 14,
1925, s. 81.
U.K. 15, Geo. 5,
c. 19, s. 57.

59b. (1) Where in the management or administration of any property vested in a trustee, any sale, lease, mortgage, surrender, release, or disposition, or any purchase, investment, acquisition, expenditure, or transaction, is in the opinion of the Supreme Court expedient, but cannot be effected by reason of the absence of or defect in any power for that purpose vested in the trustee by the instrument, if any, creating the trust, or by law, the Supreme Court—

- (a) may by order confer upon the trustee, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, including adjustment of the respective rights of the beneficiaries, as the Supreme Court may think fit ; and
- (b) may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) Subsection (1) of this section shall be deemed to empower the Supreme Court, where it is satisfied that an alteration whether by extension or otherwise of the trusts or powers conferred on the trustee by the trust instrument, if any, creating the trust or by law is expedient, to authorize the trustee to do or abstain from doing any act or thing which if done or omitted by them without the authorization of the Supreme Court or the consent of the beneficiaries would be a breach of trust, and in particular the Supreme Court may authorize the trustee—

- (a) to sell trust property notwithstanding that the terms of or the consideration for the sale may not be within any statutory powers of the trustee, or within the terms of the instrument, if any, creating the trust, or may be forbidden by that instrument ;
- (b) to postpone the sale of trust property ;
- (c) to carry on any business forming part of the trust property during any period for which a sale is postponed ;
- (d) to employ capital money subject to the trust in any business which the trustee is authorized by the instrument, if any, creating the trust or by law to carry on ;

(e) to borrow money on such terms and conditions as the court orders.

(3) The Supreme Court may from time to time rescind or vary any order made under this section, or may make any new or further order.

(4) The powers of the Supreme Court under this section shall be in addition to the powers of the Supreme Court under its general administrative jurisdiction and under this or any other Act.

(5) This section applies to trusts created either before or after the commencement of the Trustee Act Amendment Act, 1941.

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

G. J. R. MURRAY, Deputy Governor.