

9. (1933 Supplementary) *Appropriation Bill*.—The Colonial Treasurer moved the Second reading of the Bill intituled “An Ordinance to authorize the Appropriation of a Supplementary Sum of Twenty-seven thousand two hundred and forty-three Dollars and sixty-seven Cents to defray the Charges of the year 1933.”

The Colonial Secretary seconded.

Question—put and agreed to.

Bill read a second time.

Council in Committee on the Bill.

On Council resuming, the Colonial Treasurer reported that the Bill had passed through Committee without amendment and moved that it be read a third time.

The Colonial Secretary seconded.

Question—put and agreed to.

Bill read a third time and passed.

10. *Summary Offences Amendment Bill*.—The Attorney General moved the Second reading of the Bill intituled “An Ordinance to amend the Summary Offences Ordinance, 1932.”

The Colonial Secretary seconded.

Question—put and agreed to.

Bill read a second time.

Council in Committee on the Bill.

On Council resuming, the Attorney General reported that the Bill had passed through Committee without amendment and moved that it be read a third time.

The Colonial Secretary seconded.

Question—put and agreed to.

Bill read a third time and passed.

ADJOURNMENT.

11. The Council then adjourned until Thursday, the 26th day of July, 1934, at 2.30 p.m.

W. PEEL,
Governor.

Confirmed this 26th day of July, 1934.

R. A. C. NORTH,
Deputy Clerk of Councils.

NO. 574.—His Excellency the Governor has given his assent, in the name and on behalf of His Majesty the KING, to the following Ordinances passed by the Legislative Council:—

Ordinance No. 18 of 1934.—An Ordinance to amend the law relating to trustees.

Ordinance No. 19 of 1934.—An Ordinance to amend the Crown Counsel's Fees Ordinance, 1903.

Ordinance No. 20 of 1934.—An Ordinance to provide for the Incorporation of the Regional Superior in Hong Kong of the Foreign Mission Sisters of St. Dominic commonly known as Maryknoll Sisters.

HONG KONG.

No. 18 OF 1934.

I assent.

L.S.

W. PEEL,
Governor.

27th July, 1934.

An Ordinance to amend the law relating to
trustees.

[27th July, 1934.]

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

PART I.

PRELIMINARY.

1. This Ordinance may be cited as the Trustee Short title Ordinance, 1934.

2. In this Ordinance,

(a) "Authorised investments" means investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law.

Interpreta-
tion.

15 Geo. 5,
c. 19, s. 68.

(b) "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.

(c) "Convey" and "Conveyance" as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seized 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 for the validity of the conveyance.

(d) "Instrument" includes enactment.

(e) "Land" includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, or an undivided share in land; and in this definition "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, and an undivided share thereof.

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

(g) "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.

(h) "Pay" and "payment" as applied in relation to stocks and securities and in connexion with the expression "into court" include the deposit or transfer of the same in or into court.

(i) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person.

(j) "Person of unsound mind" means any person, not a minor, who not having been found to be a lunatic is incapable from infirmity of mind of managing his own affairs.

(k) "Possession" includes receipt of rents and profits or the right to receive the same, if any; and "possessed" applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land. "Income" includes rents and profits.

(l) "Property" includes movable and immovable property, and any estate, share and interest in any property, movable or immovable, and any debt, and any thing in action, and any other right or interest, whether in possession or not.

(m) "Rights" include estates and interests.

(n) "Sale" includes an exchange.

(o) "Securities" include stocks, funds and shares, and so far as relates to payments into court has the same meaning as in the enactments relating to funds in court; and "securities payable to bearer" includes securities transferable by delivery or by delivery and endorsement.

(p) "Stock" includes fully paid up shares, and, so far as relates to vesting orders made by the court under this Ordinance, includes any fund, annuity, or security transferable in books kept by any corporation, company or society, or by instrument or transfer either alone or accompanied by other formalities, and any share or interest therein.

(q) "Transfer", in relation to stock or securities, 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.

(r) "Trust" does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expression "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" where the context admits includes a personal representative, and "new trustee" includes an additional trustee.

(s) "Trust corporation" means the Public Trustee in England or a corporation appointed by the court in any particular case to be a trustee (if authorised by its constitution to act as trustee) or any Trust Company registered under Part VIII of this Ordinance.

(t) "Trust for sale", in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale; and "trustees for sale" means the persons (including a personal representative) holding land on trust for sale.

(u) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

3.—(1) This Ordinance, except where otherwise expressly provided, applies to trusts including, so far as this Ordinance applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Ordinance. Application of Ordinance. 15 Geo. 5, c. 19, s. 69.

(2) The powers conferred by this Ordinance on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Ordinance does not affect the legality or validity of anything done before the commencement of this Ordinance, except as otherwise expressly provided.

PART II.

INVESTMENTS.

4. A trustee may invest any trust funds in his hands whether at the time in a state of investment or not, in manner following:— Authorised investments. 15 Geo. 5, c. 19, s. 1.

- (a) in any manner authorised by the Trustee Act, 1925, or in any manner which may be authorised by any Act amending or replacing the said Act;
- (b) in any Government securities of the Colony;
- (c) on mortgage of property in the Colony held under Crown lease for an unexpired term of not less than fifty years including the term, if any, for which such Crown lease can be renewed without premium at the option of the lessee;
- (d) in any securities authorised by the court, on summary application for that purpose made in chambers.

5. A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Ordinance, or any Ordinance replaced by this Ordinance. Retention of redeemable stocks until redemption. 15 Geo. 5, c. 19, s. 2.

6. Every power conferred by sections 4 and 5 shall be exercised according to the discretion of the trustee, but subject to any consent or direction with respect to the investment of the trust funds, required by the instrument, if any, creating the trust or by any Ordinance. Discretion of trustees. 15 Geo. 5, c. 19, s. 3.

7. 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 authorised by the trust instrument or by the general law. Power to retain investment which has ceased to be authorised. 15 Geo. 5, c. 19, s. 4.

8.—(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments. Investment in bearer securities. 15 Geo. 5, c. 19, s. 7.

(2) Securities payable to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

(3) A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this section, be deemed to be such an express prohibition as aforesaid.

(4) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

Loans and investments by trustees not chargeable as breaches of trust.
15 Geo. 5, c. 19, s. 8.

9.—(1) A trustee lending money on the security of any property on which he can properly 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, if it appears to the court—

- (a) 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
- (b) that the amount of the loan does not exceed two third parts of the value of the property as stated in the report; and
- (c) that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, 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.

(4) This section applies to transfers of existing securities as well as to new securities and to investments made before as well as after the commencement of this Ordinance.

Liability for loss by reason of improper investment.
15 Geo. 5, c. 19, s. 9.

10.—(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 before as well as after the commencement of this Ordinance.

Powers supplementary to powers of investment.
15 Geo. 5, c. 19, s. 10.

11.—(1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

(2) On a sale by trustees of land for a term having at least sixty years to run, the trustees may, where the proceeds are liable to be invested, contract that

the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by mortgage of the land sold, with or without the security of any other property, but such mortgage, if any buildings are comprised therein, shall contain a covenant by the mortgagor to keep such buildings insured against loss or damage by fire to the full value thereof.

(3) The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such mortgage, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage.

(4) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement—

- (a) for the reconstruction of the company;
- (b) for the sale of all or any part of the property and undertaking of the company to another company;
- (c) for the amalgamation of the company with another company;
- (d) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them;

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(5) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may as to all or any of such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith:

Provided that the consideration for any such assignment shall be held as capital money of the trust.

(6) The powers conferred by this section shall be exercisable subject to 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.

(7) Where the loan referred to in sub-section (1), or the sale referred to in sub-section (2), is made under the order of the court, the powers conferred by those sub-sections respectively shall apply only if and as far as the court may by order direct.

12.—(1) Trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.

Power to deposit at Bank and to pay calls. 15 Geo. 5, c. 19, s. 11.

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

PART III.

GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES.

General Powers.

Power of trustees for sale to sell by auction, &c.
15 Geo. 5, c. 19, s. 12.

13.—(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 resell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.

Power to sell subject to depreciatory conditions.
15 Geo. 5, c. 19, s. 13.

14.—(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.

(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 any of the grounds aforesaid.

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

Power of trustees to give receipts.
15 Geo. 5, c. 19, s. 14.

15.—(1) The receipt in writing of a 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 to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a trust for sale of land.

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

Power to compound liabilities.
15 Geo. 5, c. 19, s. 15.

16. A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by

statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

- (a) accept any property, before the time at which it is made transferable or payable; or
- (b) sever and apportion any blended trust funds or property; or
- (c) pay or allow any debt or claim on any evidence that he or they think sufficient; or
- (d) accept any composition or any security, for any debt, or for any property, claimed; or
- (e) allow any time for payment of any debt; or
- (f) 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.

17.—(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.

Powers of trustees of renewable leaseholds to renew and raise money for the purpose.
56 & 57
Vict. s. 53,
s. 19.

(2) If money is required to pay for the renewal, the trustee affecting 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 renewal 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, or otherwise as to the application thereof.

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

18.—(1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they 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.

Power to raise money by sale, mortgage, &c.
15 Geo. 5,
c. 19, s. 16.

(2) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes.

Protection to purchasers and mortgagees dealing with trustees.
15 Geo. 5, c. 19, s. 17.

19. No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

Devolution of powers or trusts.
15 Geo. 5, c. 19, s. 18.

20.—(1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) Until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(3) This section takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.

(4) In this section "personal representative" does not include an executor who has renounced or has not proved.

Power to insure.
15 Geo. 5, c. 19, s. 19.

21.—(1) A trustee may insure against loss or damage by fire and typhoon any building or other insurable property to any amount, including the amount of any insurance already on foot, up to the full value of the 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.

Application of insurance money where policy kept up under any trust, power or obligation.
15 Geo. 5, c. 19, s. 20.

22.—(1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purpose of the trust as the case may be.

(2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof after discharging any costs of recovering and receiving it, to the trustees of the trust, or, if there are no trustees capable of giving a discharge therefor, into court.

(3) Any such money—

(a) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust;

(b) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees 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.

(5) Nothing contained in this section shall prejudice or affect the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the right of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

(6) This section applies to policies effected either before or after the commencement of this Ordinance, but only to money received after such commencement.

23. Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

24.—(1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may—

(a) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit;

(b) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments;

(c) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable;

(d) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release;

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission—

(a) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived, payable or charged; or

(b) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested;

unless and until required in writing so to do by some person, or the guardian of some person, beneficially

interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

Provided that nothing in this sub-section shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any statute, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every year unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

Power to
employ
agents.
15 Geo. 5,
c. 19, s. 23.

25.—(1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating, or otherwise administering any property, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside the Colony, or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

(3) Without prejudice to such general power of appointing agents as aforesaid—

(a) 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 having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration;

- (b) 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 production of any such deed by the solicitor shall have the same statutory validity and effect as if the person appointing the solicitor had not been a trustee;
- (c) 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 insurance, by permitting the banker or solicitor to have the custody of and to produce the policy of insurance 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:

Provided that nothing in this sub-section shall exempt a trustee from any liability which he would have incurred if this Ordinance and any enactment replaced by 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.

This sub-section applies whether the money or valuable consideration or property was or is received before or after the commencement of this Ordinance.

26. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Power to
concur with
others.
15 Geo. 5,
c. 19, s. 24.

27.—(1) A trustee intending to remain out of the Colony for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney, delegate to any person (including a trust corporation) the execution or exercise of his absence from the Colony of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons:

Power to
delegate
trusts during
absence
abroad.
15 Geo. 5,
c. 19, s. 25.

Provided that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this sub-section.

(2) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(3) The power of attorney shall not come into operation unless and until the donor is out of the Colony and shall be revoked by his return.

(4) The power of attorney shall be attested by at least one witness, and shall be deposited in the Registry of the Supreme Court within ten days after the execution thereof, or where not executed in the

Colony within ten days after its receipt in the Colony, with a statutory declaration by the donor that he intends to remain out of the Colony for a period exceeding one month from the date of such declaration, or from a date therein mentioned.

(5) The execution of any such instrument and statutory declaration shall be verified in such manner as may be required by any enactment in the case of powers of attorney deposited in the Registry of the Supreme Court.

(6) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.

(7) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(8) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this section.

(9) The fact that it appears from any power of attorney given under this section, 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 any person in whose books the stock is inscribed or registered with any notice of the trust.

Indemnities.

Protection
against
liability in
respect of
rents and
covenants.
15 Geo. 5,
c. 19, s. 26.

28.—(1) Where a personal representative or trustee liable as such for—

- (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 rent-charge; or
- (c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs;

satisfies all liabilities under the lease or grant which may have accrued, and been claimed, 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 and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee or other person entitled to call for a conveyance thereof and thereafter—

- (i) he may distribute the residuary estate of the deceased testator or intestate, or, as the case may be, the trust estate (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the estate of the deceased or of the trust 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 subsequent claim under the said lease or grant.

(2) This section operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) 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; "grant" applies to 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 title under them.

29.—(1) With a view to the conveyance to or distribution among the persons entitled to any movable or immovable property, trustees or personal representatives may give notice by advertisement in the *Gazette*, and such other like notices, including notices elsewhere than in the Colony, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

Protection
by means
of advertisement.
15 Geo. 5,
c. 19, s. 27.

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates, to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this section shall—

- (a) prejudice the right of any person to follow the property, or any property representing the same, into the hands of any person, other than a purchaser, who may have received it; or
- (b) free the trustees or personal representatives from any obligation to make searches similar to those which an intending purchaser would be advised to make or obtain.

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

Protection
in regard
to notice.
15 Geo. 5,
c. 19, s. 28.

30. A trustee or personal representative acting for the purposes 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.

Exoneration
of trustees
in respect
of certain
powers of
attorney.
15 Geo. 5,
c. 19, s. 29.

31. 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 act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that—

- (a) nothing in this section shall effect the right of any person entitled to the money against the person to whom the payment is made;
- (b) 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.
15 Geo. 5,
c. 19, s. 30.

32.—(1) A trustee shall 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, or of any banker, broker, or other person with whom any trust money 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.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

Maintenance, Advancement and Protective Trusts.

Power to
apply income
for
maintenance
and to
accumulate
surplus
income
during a
minority.
15 Geo. 5,
c. 19, s. 31.

33.—(1) Where any property is held by trustees in trust for any person for any interest whatsoever, whether vested or contingent, then, subject to any prior interests or charges affecting that property—

- (i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—
 - (a) any other fund applicable to the same purpose; or
 - (b) any person bound by law to provide for his maintenance or education; and
- (ii) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under sub-section (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:

Provided that, in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid, the trustees shall have regard to the age of the infant and his requirements and generally to the circumstances of the case, and in particular to what other income, if any, is applicable for the same purposes; and where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments, and shall hold those accumulations as follows:—

(i) If any such person—

(a) attains the age of twenty-one years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest; or

(b) on attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which such income arose absolutely;

the trustees shall hold the accumulations in trust for such person absolutely, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

(ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes;

but the trustees may, at any time during the infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income available is sufficient, and subject to any rules of court to the contrary) be five dollars per centum per annum.

(4) This section applies to a vested annuity in like manner as if the annuity were the income of property held by trustees in trust to pay the income thereof to the annuitant for the same period for which the annuity is payable, save that in any case accumulations made during the infancy of the annuitant shall be held in trust for the annuitant or his personal representatives absolutely.

(5) This section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of this Ordinance.

Power of
advance-
ment.
15 Geo. 5,
c. 19, s. 32.

34.—(1) Trustees may at any time or times pay or apply any capital money subject to a trust, for the advancement or benefit in such manner as they may, in their absolute discretion, think fit, of any person entitled to the capital of the trust property or of any share thereof, whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event, or subject to a gift over on his death under any specified age or on the occurrence of any other event, and whether in possession or in remainder or reversion, and such payment or application may be made notwithstanding that the interest of such person 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:

Provided that—

- (a) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one half of the presumptive or vested share or interest of that person in the trust property; and
- (b) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and
- (c) 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 of full age and consents in writing to such payment or application.

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

(3) This section does not apply to trusts constituted or created before the commencement of this Ordinance.

Protective
trusts.
15 Geo. 5,
c. 19, s. 33.

35.—(1) Where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called "the principal beneficiary") for the period of his life or for any less period, then, during the period (in this section called the "trust period") the said income shall, without prejudice to any prior interest, be held on the following trusts, namely:—

- (i) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;
- (ii) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or

others of the following persons (that is to say)—

- (a) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or
- (b) if there is no wife or husband or issue of the principal beneficiary in existence, the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or to the annuity fund, if any, or arrears of the annuity, as the case may be;

as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit.

(2) This section does not apply to trusts coming into operation before the commencement of this Ordinance, and has effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

(3) Nothing in this section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside.

PART IV.

APPOINTMENT AND DISCHARGE OF TRUSTEES.

36.—(1) Where, at the commencement of this Ordinance there are more than four trustees of a settlement of land or more than four trustees holding land in trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

Limitation of the number of trustees. 15 Geo. 5, c. 19, s. 34.

(2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Ordinance—

- (a) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;
- (b) the number of the trustees shall not be increased beyond four.

(3) The restrictions hereby imposed on the number of trustees do not apply in the case of land vested in trustees for charitable, ecclesiastical, or public purposes or where the net proceeds of the sale of the property are held for like purposes.

37.—(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 herein, or is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Ordinance on the number of trustees—

Power of appointing new or additional trustees. 15 Geo. 5, c. 19, s. 36.

- (a) the person or persons nominated for the purpose of appointing new trustees by the instrument if any, creating the trust; or
- (b) 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 one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the Colony, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this section shall apply accordingly, but subject to the restrictions imposed by this Ordinance on the number of trustees.

(3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Ordinance, then, for the purposes of this section and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

(4) The power of appointment given by sub-section (1) of this section or any similar previous enactment to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this section, or by any similar previous enactment, if willing to act for that purpose and without thereby accepting the office of executor.

(6) Where a sole trustee, other than a trust corporation is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the court or otherwise, then and in any such case—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being;

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any statutory enactment provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(7) Every new trustee appointed under this section, 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.

(8) The provisions of this section relating 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.

(9) Where a lunatic or person of unsound mind, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this section, unless leave has been given by the court to make the appointment.

38.—(1) On the appointment of a trustee for the whole or any part of trust property—

(a) the number of trustees may, subject to the restrictions imposed by this Ordinance on the number of trustees, be increased; and

(b) a separate set of trustees, not exceeding four, 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, save as hereinafter provided, one separate trustee may be appointed; and

(c) it shall not be obligatory, save as hereinafter provided, 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, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Ordinance shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

39.—(1) A statement, contained in any instrument coming into operation after the commencement of this Ordinance by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the Colony for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

Supple-
mental
provisions
as to
appoint-
ment of
trustees.
15 Geo. 5,
c. 19, s. 37.

Evidence
as to a
vacancy in
a trust.
15 Geo. 5,
c. 19, s. 38.

Retirement
of trustee
without a
new
appointment.
15 Geo. 5,
c. 19, s. 38.

40.—(1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid 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, 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.

Vesting of
trust
property in
new or
continuing
trustees.
15 Geo. 5,
c. 19, s. 40.

41.—(1) Where by a deed a new trustee is appointed to perform any trust, then—

(a) if the deed 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 or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate, interest or right to which the declaration relates; and

(b) if the deed is made after the commencement of this Ordinance and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates, interests and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—

(a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed 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; and

(b) if the deed is made after the commencement of this Ordinance and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Ordinance, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in sub-sections (1) and (2) of this

section, as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend—

- (a) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;
- (b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;
- (c) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under any enactment.

In this sub-section "lease" includes an underlease and an agreement for a lease or underlease.

(5) For purposes of registration of the deed, the person or persons making the declaration, expressly or impliedly, 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.

(6) This section applies to deeds of appointment or discharge executed on or after the first day of July, 1901.

PART V.

POWERS OF THE COURT.

Appointment of new Trustees.

42.—(1) The court may, whenever it is expedient ^{Power of court to appoint new trustees.} to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do ^{15 Geo. 5, c. 19, s. 41.} without the assistance of the court, make an order appointing 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 appointing a new trustee in substitution for a trustee who is sentenced to a term of imprisonment or is a lunatic or a person of unsound mind or is a bankrupt or is a corporation which is in liquidation or has been dissolved.

(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 gives power to appoint an executor or administrator.

Power to
authorise
remunera-
tion.
15 Geo. 5,
c. 19, s. 42

43. Where the court appoints a corporation, other than the Public Trustee in England, to be a trustee either solely or jointly with another person, the court may authorise the corporation to charge such remuneration for its services as trustee as the court may think fit.

Powers of
new trustee
appointed
by court.
15 Geo. 5,
c. 19, s. 43.

44. Every trustee appointed by a court of competent jurisdiction 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.

Vesting Orders.

Vesting
orders of
land.
15 Geo. 5,
c. 19, s. 44.

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

- (i) where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (ii) where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—
 - (a) is under disability; or
 - (b) is out of the jurisdiction of the court; or
 - (c) cannot be found, or, being a corporation, has been dissolved;
- (iii) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;
- (iv) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;
- (v) where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;
- (vi) where a trustee jointly or solely entitled to or possessed of any interest in 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 interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement;
- (vii) where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Ordinance called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest 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 trustee the land or interest therein 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 or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

46. Where any interest in 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 that interest on any trust, the court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the estate or interest to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Orders as to contingent rights of unborn persons.
15 Geo. 5, c. 19, s. 45.

47. Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

Vesting order in place of conveyance by infant mortgagee.
15 Geo. 5, c. 19, s. 46.

48. Where any 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 any interest in 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 for the purposes of this Ordinance, and the court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate or interest as the court thinks fit in the purchaser or mortgagee or in any other person.

Vesting order consequential on order for sale or mortgage of land.
15 Geo. 5, c. 19, s. 47.

49. Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the court may declare—

Vesting order consequential on judgment for specific performance &c.
15 Geo. 5, c. 19, s. 48.

- (a) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Ordinance; or

- (b) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction 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 court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

50. A vesting order under any of the foregoing provisions shall in the case of a vesting order consequential on the appointment of a trustee, have the same effect—

Effect of vesting order.
15 Geo. 5, c. 19, s. 49.

- (a) 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 or interest as the court directs; or

- (b) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest 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.

Power to
appoint
person to
convey.
15 Geo. 5,
c. 19, s. 50.

51. In all cases where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint a person to convey the land or any interest therein 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.

Vesting
orders as to
stock and
thing in
action.
15 Geo. 5,
c. 19, s. 51.

52.—(1) In any of the following cases, namely:—

- (i) where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power;
- (ii) where a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person to stock or to a thing in action—
- (a) is under disability; or
- (b) is out of the jurisdiction of the court:
or
- (c) cannot be found, or, being a corporation, has been dissolved; or
- (d) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing 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
- (e) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him;
- (iii) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;
- (iv) where stock is standing in the name of a deceased person whose personal representative is under disability;
- (v) where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient;

the 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 the thing in action, in any such person as the court may appoint:

Provided that—

- (a) where the order is consequential on the appointment of a 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:

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

(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 companies, banks and societies 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 company, bank or society to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing 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 enactments relating to merchant shipping as if they were stock.

53. The powers conferred by this Ordinance as to vesting orders may be exercised for vesting any interest in land, stock or thing in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the court under its general or statutory jurisdiction. Vesting orders of charity property. 15 Geo. 5, c. 19, s. 52.

54. Where an infant is beneficially entitled to any property, the court may, with a view to the application of the capital or income thereof for the maintenance, education or benefit of the infant, make an order— Vesting orders in relation to infant's beneficial interest. 15 Geo. 5, c. 19, s. 53.

(a) appointing a person to convey such property; or

(b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit.

55. Where a vesting order is made as to any land under this Ordinance founded on an allegation of any of the following matters namely— Orders made upon certain allegations to be conclusive evidence. 15 Geo. 5, c. 19, s. 55.

(a) the personal incapacity of a trustee or mortgagee; or

(b) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the court or cannot be found, or being a corporation has been dissolved; or

- (c) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor; or
- (d) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage is living or dead; or
- (e) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested;

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 does not prevent the court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

Jurisdiction to make other Order.

Power of Court to authorise dealing with trust property.
15 Geo. 5, c. 19, s. 57.

56.—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The court may, from time to time, rescind or vary any order under this section, or may make any new or further order.

(3) An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

Persons entitled to apply for orders.
15 Geo. 5, c. 19, s. 58.

57.—(1) An order under this Ordinance for the appointment of a new trustee or concerning any interest in land, stock or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing 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 interest in land, stock, or thing 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.

Power to give judgment in absence of a trustee.
15 Geo. 5, c. 19, s. 59.

58. Where in any action the 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 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.

59. The 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 raised and paid out of the property 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.

Power to charge costs on trust estate. 15 Geo. 5, c. 19, s. 60.

60. If it appears to the court that a trustee, whether appointed by the court or otherwise, 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 him either wholly or partly from personal liability for the same.

Power to relieve trustee from personal liability. 15 Geo. 5, c. 19, s. 61.

61.—(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman 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 persons claiming through him.

Power to make beneficiary indemnify for breach of trust. 15 Geo. 5, c. 19, s. 62.

(2) This section applies to breaches of trust committed as well before as after the commencement of this Ordinance.

Payment into Court.

62.—(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 court, and the same shall, subject to the rules of court, be dealt with according to the orders of the court.

Payment into court by trustees. 15 Geo. 5, c. 19, s. 63.

(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 money or securities is or 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 court may order the payment into court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker, or other depository, the court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into court.

(5) 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 money and securities so transferred, paid or delivered.

PART VI.

THE JUDICIAL TRUSTEE.

Power of
court on
application
to appoint
judicial
trustee.
59 & 60
Vict. c. 35,
s. 1.

63.—(1) Where application is made to the court by or on behalf of the person creating or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court may, in its discretion, appoint a person (in this part of this Ordinance called a judicial trustee) to be a trustee of that trust, either jointly with any other person or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees.

(2) The administration of the property of a deceased person, whether a testator or intestate, shall be a trust, and the executor or administrator a trustee, within the meaning of this part of this Ordinance.

(3) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee, and, in the absence of such nomination, or if the court is not satisfied of the fitness of a person so nominated, an official of the court may be appointed, and in any case a judicial trustee shall be subject to the control and supervision of the court as an officer thereof.

(4) The court may, either on request or without request, give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5) There may be paid to the judicial trustee out of the trust property such remuneration, not exceeding any prescribed limits, as the court may assign in each case, subject to any rules under this part of this Ordinance respecting the application of such remuneration where the judicial trustee is an official of the court, and the remuneration so assigned to any judicial trustee shall, save as the court may for special reasons otherwise order, cover all his work and personal outlay.

(6) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited, and a report thereon made to the court by such persons as may be prescribed, and, in any case where the court shall so direct, an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee, shall be made in such manner as may be prescribed.

Rules.
59 & 60 Vict.
c. 35, s. 4.

64.—(1) The Chief Justice may with the approval of the Legislative Council make rules for carrying into effect this part of this Ordinance and especially:—

- (a) for requiring judicial trustees, who are not officials of the court, to give security for the due application of any trust property under their control;
- (b) respecting the safety of the trust property, and the custody thereof;
- (c) respecting the remuneration of judicial trustees and for fixing and regulating the fees to be taken under this part of this Ordinance so as to cover the expenses of the administration of this part of this Ordinance, and respecting the payment of such remuneration and fees out of the trust property, and, where the judicial trustee is an official of the court, respecting the application of the remuneration and fees payable to him;
- (d) for dispensing with formal proof of facts in proper cases;

- (e) for facilitating the discharge by the court of administrative duties under this part of this Ordinance without judicial proceedings and otherwise regulating procedure under this part of this Ordinance and making it simple and inexpensive;
- (f) respecting the suspension or removal of any judicial trustee, and the succession of another person to the office of any judicial trustee who may cease to hold office, and the vesting in such person of any trust property;
- (g) respecting the classes of trusts in which officials of the court are not to be judicial trustees, or are to be so temporarily or conditionally;
- (h) respecting the procedure to be followed where the judicial trustee is executor or administrator;
- (i) for preventing the employment by judicial trustees of other persons at the expense of the trust, except in cases of strict necessity;
- (j) for the filing and auditing of the accounts of any trust of which a judicial trustee has been appointed.

65. In this part of this Ordinance,

Definitions.

- (a) "official of the court" means the holder of such paid office in or connected with the court as may be prescribed;
- (b) "prescribed" means prescribed by rules made under this part of this Ordinance.

59 & 60 Vict.
c. 35, s. 5.

PART VII.

THE OFFICIAL TRUSTEE.

66.—(1) For the purpose of carrying into effect the provisions of this Part of this Ordinance, it shall be lawful for the Governor to appoint a fit and proper person to be Official Trustee: Provided that, until such appointment is made, the Official Trustee appointed under the Trustees Ordinance, 1901, shall be deemed to have been appointed under this Ordinance.

Appointment
of Official
Trustee.

Ordinance
No. 5 of
1901.

(2) The said office shall have perpetual succession, and all lands or any interest therein, and all moneys, stocks, and securities and land which may be vested in the Official Trustee under this Part of this Ordinance shall be deemed to be vested in the Official Trustee for the time being, without any further transfer or conveyance.

67. Trustees, or the majority of trustees, having in their hands or under their control any moneys belonging to any trust, shall be at liberty, on filing in the Registry of the court an affidavit shortly describing the instrument creating the trust, according to the best of their knowledge and belief, to pay the same, with the consent of the Official Trustee and in accordance with such directions as they may receive for the purpose from him, into the court; and the said trust moneys shall be paid through the Treasury into a bank authorised by the Governor on deposit bearing interest, or otherwise, to the account of the Official Trustee (by his official designation) in the matter of the particular trust (describing the same by the names of the parties, as accurately as may be, for the purpose of distinguishing it), in trust to attend the orders of the court.

Payment of
trust
moneys into
bank to
credit of
Official
Trustee.

10 & 11 Vict.
c. 96, s. 1;
56 & 57 Vict.
c. 53, s. 42.

- Transfer of trust securities into name of Official Trustee.**
10 & 11 Vict. c. 96, s. 1.
- 68.** Trustees, or the majority of trustees, having any securities standing in their names in the books of any public company or corporation established in the Colony, or in the names of any deceased persons of whom they are personal representatives, upon any trust, shall be at liberty, on filing such affidavit as aforesaid, to transfer such securities, with such consent and in accordance with such directions as aforesaid, into the name of the Official Trustee (by his official designation) or to deposit the same in his name in such bank as aforesaid in the matter of the particular trust (describing the same as aforesaid), in trust to attend the orders of the court.
- Conveyance of land in trust to Official Trustee.**
10 & 11 Vict. c. 96, s. 1.
- 69.** Trustees, or the majority of trustees, in whom any land within the Colony is or becomes vested upon any trust, shall be at liberty, on filing such affidavit as aforesaid, to convey such land, with such consent and in accordance with such directions as aforesaid, to the Official Trustee, in trust to attend the orders of the court.
- Certificate to be given by Official Trustee.**
10 & 11 Vict. c. 96, s. 1.
- 70.** In every such case as aforesaid, the certificate of the Official Trustee for the moneys so paid, or of the transfer or deposit of such securities, or of the conveyance of such land shall be a sufficient discharge to such trustees or other persons for the moneys so paid, or the stocks or securities so transferred or deposited, or the land so conveyed as aforesaid.
- Order for payment, etc. by majority of trustees without concurrence of others.**
56 & 57 Vict. c. 53, s. 42.
- 71.—(1)** Where any moneys or securities, or any land, are or is vested in any persons as trustees, and the majority of them are desirous of paying, transferring, depositing, or conveying the same as aforesaid, but the concurrence of the other or others cannot be obtained, the court may order the payment, transfer, deposit, or conveyance 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.
- (2) Every payment, transfer, deposit, delivery, and conveyance 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, securities, or land so paid, transferred, deposited, delivered, or conveyed.
- Administration of trust estate.**
10 & 11 Vict. c. 96, s. 2.
- 72.—(1)** Such orders as may seem fit shall be made by the court in respect of the trust estate and for the investment and payment of any such moneys, or of any dividends or interest on any such securities, and for the transfer and delivery out of any such securities, and for the administration of any such trust generally, upon a petition to be presented in a summary way to the court by such party or parties as to the court may appear to be competent and necessary in that behalf, and service of such petition shall be made on such person or persons as the court may see fit and direct.
- (2) Every order made upon any such petition shall have the same authority and effect, and shall be enforced in the same manner, as if the same had been made in an action regularly instituted in the court.
- (3) If in any case it appears that the trust estate cannot be safely administered without the institution of one or more action or actions, the court may direct any such action or actions to be instituted.

73.—(1) There shall be imposed and levied for the use of the Crown upon every trust estate administered under this Part of this Ordinance a charge equivalent to the following percentage on the net value of the trust estate:—two per cent. where the value of the trust estate does not exceed ten thousand dollars, and where the value exceeds ten thousand dollars two per cent. on the first ten thousand dollars and one per cent. on the excess.

Charges upon trust estate administered by Official Trustee.

(2) The said charge shall constitute a primary lien upon the trust estate, and shall be levied, in the case of trust moneys deposited in a bank, by an order of the court, authorising the payment thereof to the Official Trustee for the use of the Crown, and in the case of securities or land, by sale, mortgage, or otherwise as the court may direct, and in case of any such sale or mortgage, the court may, by the same or any further order, empower the Official Trustee to execute all instruments necessary for carrying out this provision, and instruments so executed shall be as valid and effectual to all intents and purposes as if the same had been executed by all persons who, but for this provision, would have been necessary parties thereto.

(3) There shall also be imposed and levied for the use of the Crown upon every such estate a charge equivalent to two per cent. on the annual revenue of the trust estate. The Official Trustee shall deduct such charge in making up the annual accounts of the estate.

74.—(1) In the administration of any trust estate, the Official Trustee shall have and may exercise all the rights and powers conferred upon trustees by this Ordinance, so far as they are applicable to such trust estate.

General rights and powers of Official Trustee.

(2) The Official Trustee may, subject to any rules that may be made under section 76, employ for the purposes of any trust such solicitors, bankers, accountants, brokers or other persons, as he may consider necessary, and, in determining the persons to be employed in relation to any trust, he shall have regard to the interests of the trust, but subject to this he shall, whenever practicable, take into consideration the wishes of the creator of the trust and of the other trustees (if any) and of the beneficiaries, either expressed or implied by the practice of the creator of the trust, or in the previous management of the trust.

6 Ed. 7, c. 55, s. 11 (2).

75. The Official Trustee shall incur no personal liability by reason of any securities being transferred into his name as aforesaid, or by reason of any land being conveyed to him as aforesaid, or by reason of any loss accruing to any trust estate in his hands, otherwise than by his own wilful neglect or default: Provided that nothing in this Part of this Ordinance shall be deemed to affect any rights or remedies against the trust estate or any *cestui que trust* or any person other than the Official Trustee and the trustee so discharged as aforesaid.

Limitation of liability of Official Trustee.

76. The rules contained in the First Schedule shall be observed in proceedings under the provisions of this Part of this Ordinance relating to the administration of trust funds, subject to the repeal or variation thereof under the powers vested in the court in relation to the making of general rules and orders.

Rules for administration of trust funds. First Schedule.

PART VIII.

TRUST COMPANIES.

Application by company to be registered as a trust company.

77. Any public company incorporated in the Colony may apply to the Registrar of Companies to be registered as a Trust Company provided that—

- (a) the objects of the company are restricted to some or all of the objects set out in section 82;
- (b) the authorised capital of the company is not less than five hundred thousand dollars divided into shares of not less than ten dollars each;
- (c) at least half of the amount of every share issued by the company remains unpaid and is not liable to be called up, except in the event of and for the purpose of the winding-up or dissolution of the company;
- (d) the board of directors has been duly appointed in accordance with the articles of association of the company;
- (e) at least one hundred and fifty thousand dollars of the authorised capital has been *bonâ fide* paid up;
- (f) the company has deposited with the Colonial Treasurer Incorporated securities to be approved by the Governor in Council to the value of one hundred thousand dollars; and
- (g) the company is able to meet its obligations, apart from its liability to its shareholders, without taking into account the securities so deposited with the Colonial Treasurer Incorporated.

cf. Ordinance No. 15 of 1930.

Issue of certificate.

78.—(1) On the receipt of an application under section 77, the Registrar of Companies shall make such enquiry as he deems necessary, and, if satisfied that all the requirements of section 77 have been complied with, shall register the company applying for registration as a Trust Company in the register prescribed by section 80 and shall issue to it a certificate that the company is registered as a Trust Company, and thereupon the company shall be invested with all the powers, privileges, and immunities and shall be subject to all the liabilities imposed by this Part of this Ordinance.

(2) Notice of the issue of such certificate shall be published by the Registrar of Companies in the Gazette for four consecutive weeks next following the issue.

(3) If the Registrar of Companies is not satisfied that all the requirements of section 77 have been complied with, he shall refuse to register the company as a Trust Company: provided that the company may appeal from such refusal to the Governor in Council, whose decision shall be final.

Existing companies may alter their objects.

79. If the memorandum of association of any company which has been incorporated in the Colony before the commencement of this Ordinance includes objects which are generally of the same character as, but are in some particulars in excess of, those set out in section 82, the company may, within six months after the commencement of this Ordinance, by special resolution alter its memorandum of association so as to restrict its objects to some or all of the objects set out in the said section and the alteration shall take effect upon the passing of the special resolution, notwithstanding any enactment to the contrary.

Register of Trust Companies to be kept.

80. There shall be kept in the office of the Registrar of Companies a register, to be called the "Register of Trust Companies", in which shall be entered the

names of all Trust Companies registered under this Ordinance, together with such other particulars as the Registrar of Companies may think necessary.

81.—(1) From the time of the issue to any company of a certificate under section 78 the securities deposited by the company with the Colonial Treasurer Incorporated under section 77 shall be held by the Colonial Treasurer Incorporated as security for the depositors and creditors of the company and for the faithful execution of all Trusts which may be accepted by or imposed upon the company and for its obligations generally. Deposit to be held as security.

(2) If at any time, by reason of the decline in value of any securities so held by the Colonial Treasurer Incorporated or of increase of the gross liabilities of any Trust Company, the Registrar of Companies is of opinion that additional security ought to be furnished by the Trust Company, he may order the company to make, within a period to be stated in the order, a further deposit of a specified value with the Colonial Treasurer Incorporated: provided that the company may appeal from such order to the Governor in Council, whose decision shall be final.

(3) Any Trust Company may from time to time, with the approval of the Governor in Council, substitute other securities for all or any of the securities deposited with the Colonial Treasurer Incorporated.

(4) The interest accruing due on the securities deposited shall be paid to the company.

82.—(1) The objects of a Trust Company may be some or all of, but shall not exceed the following:— Objects.

- (a) to accept and execute the offices of executor, administrator, trustee, receiver, receiver and manager, assignee, liquidator, guardian of the property of infants, committee of the estates of lunatics, or other like office of a fiduciary nature;
- (b) to act as attorney or agent for the collection, receipt and payment of money and for winding up estates and for the sale or purchase of any movable or immovable property;
- (c) to act as agent for the management and control of movable and immovable property for and on behalf of the owners thereof or for or on behalf of executors, administrators or trustees;
- (d) to act as investing and financial agent for and on behalf of executors, administrators, and trustees or any other persons whatsoever and to receive money in trust for investment and to allow interest thereon until invested; and to undertake for and on behalf of executors, administrators and trustees or any other persons whatsoever the negotiation of loans of all descriptions and the procuring and lending of money on the security of any description of property immovable or movable or without taking any security on such terms as may be arranged, and to advance and lend moneys to protect any estate, trust or property entrusted to the company as aforesaid and to charge interest upon any such advances:

Provided that nothing herein contained shall be held either to restrict or extend the powers of the company as trustee or agent under the terms of any trust or agency that may be conferred upon it;

- (e) to take securities of such nature as are deemed expedient for any moneys owing to the company;

- (f) to be the custodian on such terms as are agreed upon of any moneys, securities, jewellery, plate or other valuable property and of papers, documents, deeds, wills, debentures and other evidence of title or indebtedness;
- (g) to receive and manage any sinking, redemption, guarantee or any other special fund or deposit and to act as agent for counter-signing, registering or otherwise ascertaining and certifying to the genuineness of any issue of shares, stocks, bonds, debentures or other securities for money of any Government, Municipal or other corporate body or of any association, whether incorporated or not, duly authorised to issue and make such issue and to hold any such securities as agent or trustee and to act generally as agent for any such Government, Municipal or corporate body or association;
- (h) to acquire and hold immovable property for the actual use and occupation of the company or any of its officers and servants and to erect, construct, enlarge, alter and maintain any buildings necessary or convenient for the said purposes and to sell or otherwise dispose of any such immovable property if not required for the said purposes;
- (i) to hold land which having been mortgaged to the company is acquired by it for the protection of its investments; and from time to time sell, mortgage, lease or otherwise dispose thereof;
- (j) to deposit the moneys of the company not immediately required with any bank or banks at interest until such moneys can be more permanently invested and to invest the moneys of the company in accordance with the provisions of section 92;
- (k) to borrow moneys and secure the repayment thereof with interest in accordance with the provisions of section 94;
- (l) to receive and collect such remuneration for its services as is agreed upon or as fixed or allowed from time to time by law and all usual and customary charges, costs and expenses.
- (m) to support and subscribe to any charitable or public object and any institution, society or club which may be for the benefit of the company or its employees or may be connected with any town or place where the company carries on business; to give pensions, gratuities or charitable aid to any person or persons who may serve or have served the company or to the wives, children or other relatives of such persons; to make payments towards insurance and to form and contribute to provident and benefit funds for the benefit of any persons employed by the company:

Provided that no such subscription, gift, payment or contribution shall be given or made, except out of profits of the company available for distribution as dividend;

cf. Ordinance No. 39 of 1932, s. 348.

- (n) to carry on within the limits of the China Order in Council, 1925 (and any Orders amending, read with, auxiliary to or substituted for the same), but not elsewhere outside the Colony, any business or to hold any office which a Trust Company is by this Ordinance authorised to carry on or to hold in the Colony;

(o) to acquire and undertake the whole or any part of the business of any person or company of a like nature to any business which a Trust Company is authorised to carry on and in consideration for such acquisition to undertake all or any of the liabilities of such person or company and to issue shares to such person or company.

(p) to do all such other things as are incidental or conducive to the attainment of the before-mentioned objects or any of them.

(2) Nothing in this section shall be construed to authorise any Trust Company to engage in the business of banking or of insurance or the business of a deposit, provident or benefit society.

(3) No Trust Company shall carry on any business or execute any office other than the businesses or offices included in the objects set out in sub-section (1).

83. If at any time a Trust Company shall be appointed executor of the will of any testator, it shall be lawful for the company to apply to the court for probate of the will and if probate be granted, to exercise and discharge all the powers and duties of an executor.

84.—(1) If and whenever any person shall be entitled to apply for probate of the will of any testator without leave being reserved to any other person to apply for probate, it shall be lawful for such person, whether absent from the Colony or not, and notwithstanding the provisions of any other enactment, instead of himself applying for such probate, to authorise a Trust Company to apply to the court for a grant of administration with the will annexed of the estate of such testator, and such grant may be made to the Trust Company upon its own application, when so authorised, but the provisions of this section shall not apply to any case in which a will provides that a company shall not act as executor or in the trusts thereof.

(2) If and whenever any person shall be entitled to apply for letters of administration with the will of any testator annexed of the estate of such testator, it shall be lawful for such person, whether absent from the Colony or not, and notwithstanding the provisions of any other enactment, to authorise a Trust Company, either alone, or jointly with any other person, to apply to the court for a grant of letters of administration with the will annexed of the estate of such testator, and such grant may be made to the company upon its own application when so authorised, but the provisions of this section shall not apply to a case in which a will provides that a company shall not act as executor, or in the trusts thereof.

(3) It shall be lawful for any person or persons entitled to apply for administration of the estate of any intestate, whether such person or persons be absent from the Colony or not, and notwithstanding the provisions of any other enactment, to authorise a Trust Company to apply to the court for such letters of administration, either alone or jointly with any other person, and administration of the estate of any such intestate may be granted to the company either alone or jointly as aforesaid, upon its own application, when so authorised.

(4) For the purposes of any application to the court for letters of administration to the estate of any deceased person, the court shall consider a Trust Company, when authorised as aforesaid, to be in law entitled, equally with any other person or class of per-

sons to apply for and obtain a grant, but a Trust Company, being so entitled, shall not on that account alone, be preferred to the widower, widow, or next-of-kin of any intestate.

(5) No grant of probate or of letters of administration shall be granted to a syndic or nominee on behalf of a Trust Company.

Procedure
as to
petitions,
etc.

85.—(1) In all cases in which a Trust Company is empowered under this Part of this Ordinance to apply for probate or letters of administration, any petition, declaration, account or affidavit or other necessary document may be made or sworn by any officer of the company duly authorised by the company in that behalf.

(2) Any officer of the company appointed by a Trust Company for that purpose may, on behalf of the company, sign any petition, account or statement, take any oath, swear any affidavit, make any declaration, verify any act, give personal attendance at any court or place, and do any act or thing whatsoever, which may require to be signed, taken, sworn, made, verified, given, or done on behalf of the company: Provided always that nothing in this Part of this Ordinance contained shall confer upon any person, not otherwise entitled thereto, any right to appear or be heard before or in any Court on behalf of the company or to do any act whatsoever on behalf of the company which could otherwise be lawfully done only by a counsel or by a solicitor.

Appointment
of a com-
pany to be
a trustee.

86. In all cases in which the court or any person or persons has or have power to appoint a trustee, whether as an original or new or additional trustee, to perform any legal trust or duty a Trust Company may be appointed in the same manner as if the company were a private individual: provided that no Trust Company shall be appointed in any case in which the instrument creating the trust, or the power authorising the appointment, forbids the appointment of a company.

Joint
tenancy.

87. A Trust Company, acting in a fiduciary capacity, shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were a private individual.

Trust
Company
may act
as agent.

88. It shall be lawful for a Trust Company to act under any deed or instrument by which the company is appointed agent or attorney for any person, and all the powers conferred upon the company by any such deed or instrument may be exercised by such officer of the company as the company may appoint for that purpose: provided that nothing in this section shall be deemed to authorise any person to confer upon a trust company any power which may not lawfully be delegated by him.

Trust
Company
not to be
required to
furnish
security
when granted
administra-
tion or
appointed
receiver,
guardian
committee
etc., by
the court.

89.—(1) Notwithstanding the provisions of any other enactment, no Trust Company to which a grant of letters of administration has been made shall be required to furnish security for the due administration of the estate.

(2) Notwithstanding the provisions of any other enactment, no Trust Company appointed by the court to perform the duties of receiver, guardian, committee or any other office or trust shall be required to furnish security for the due performance of such duties.

90. All moneys, property and securities received or held by any Trust Company in a fiduciary capacity shall always be kept distinct from those of the company, and in separate accounts, and so marked in the books of the company for each particular trust as always to be distinguished from any other in the registers and other books of account to be kept by the company, so that at no time shall trust moneys form part of or be mixed with the general assets of the company; and all investments made by the company as trustee shall be so designated that the trusts to which such investments belong can be readily identified at any time.

Trust funds to be kept separate.

91.—(1) A Trust Company may invest trust moneys in its hands in or upon any securities in which private trustees may by law invest trust moneys and may from time to time vary any such investment for others of the same nature: provided that the company shall not in any case invest the moneys of any trust in or upon securities prohibited by the instrument creating the trust, and whenever any special directions are given in any order, judgment, decree or will or in any other instrument creating the trust, as to the particular class or kind of securities or property in or upon which any investment shall be made, the company shall follow such directions. The company may also, in its discretion, retain and continue any investment and securities coming into its possession in any fiduciary capacity.

Investment of trust funds.

(2) No Trust Company shall directly or indirectly invest any trust moneys otherwise than in accordance with the provisions of sub-section (1)

92.—(1) A Trust Company may invest moneys forming part of its own capital or reserve or accumulated profits—

Investment of Trust Company's own funds.

- (a) in or upon any securities in or upon which private trustees may by law invest trust moneys, and
- (b) in or upon such other securities as the Governor in Council may from time to time approve.

(2) A Trust Company may acquire and hold immovable property for the actual use and occupation of itself or of any of its officers or servants and may sell and dispose of the same.

(3) A Trust Company may, for the protection of its investments, acquire land which has been mortgaged to it, but shall sell any land so acquired within three years after the acquisition thereof, unless such time is extended by the Governor in Council.

(4) No Trust Company shall directly or indirectly invest any of its moneys otherwise than in accordance with sub-sections (1), (2) and (3): provided that nothing in this section shall be deemed to prevent the acceptance by a Trust Company of any securities whatsoever to secure the payment of a debt previously contracted in good faith; but any security so acquired by the company which it would otherwise be prohibited from taking or holding shall, within two years from the time of its acquisition, or within such further time as may be allowed by the Registrar of Companies, be sold or disposed of.

93. No loan shall be made by any Trust Company to any director or other officer or servant thereof or to any company or firm in the management of which any such director or other officer or servant is actively engaged. If any loan is made in contravention of this section, all directors and officers of the company

Loans to Trust Company officers, etc. prohibited.

who made the loan or assented thereto shall be jointly and severally liable to the company for the amount thereof with interest.

Borrowing. **94.**—(1) For the purpose of attaining the objects of the company as set out in section 82 (or such of them as the company may have adopted), and for no other purpose, a Trust Company may from time to time borrow money provided that the aggregate of the sums of money borrowed shall at no time exceed the amount of the company's capital for the time being paid up.

(2) Moneys borrowed by a Trust Company shall not be secured, by debenture or otherwise, on its capital or general undertaking, but may be secured on any of the Company's property (not being property held by it on any trust), other than the securities deposited by it with the Colonial Treasurer Incorporated under the provisions of this Part of this Ordinance.

Annual Statement. **95.**—(1) Every Trust Company shall forward annually to the Registrar of Companies, together with the return required by section 107 of the Companies Ordinance, 1932, a statement of the liabilities of the company to the public in its trustee capacity and of the investments and holdings of the company on trust account.

Ordinance No. 39 of 1932.

(2) The statement shall be verified by the affidavit of the chairman or vice-chairman and of the manager or secretary of the company.

(3) Every document purporting to be certified by the Registrar of Companies to be a copy of any such statement or of part thereof shall be deemed to be a copy of that statement or of part thereof, and shall be received in evidence as if it were the original statement or part thereof, unless some variation between it and the original statement is proved.

Investigation by inspector. **96.**—(1) The Governor in Council may at any time appoint an inspector to investigate the affairs and management of any Trust Company and may prescribe the manner in, and the extent to, which the investigation shall be conducted.

(2) It shall be the duty of all officers and servants of the company to produce for examination by the inspector all books, accounts, vouchers and other documents in their custody or control in relation to matters under investigation, and to answer truly all inquiries addressed to them by the inspector respecting any matter affecting the affairs of the company.

(3) The inspector shall make a report of his investigation to the Colonial Secretary.

(4) All expenses of and incidental to any such investigation shall be paid by the company, if the Governor in Council so directs.

Special provision as to winding-up a Trust Company. **97.**—(1) The court may order the winding-up of a Trust Company in accordance with the Companies Ordinance, 1932, and the provisions of that Ordinance shall apply accordingly subject however to the modification that the company may also be ordered to be wound-up on application made by the Attorney General if—

Ordinance No. 39 of 1932, s. 163.

(a) the company has made default in complying with a requirement of this Part of this Ordinance and such default has continued for a period of two months after notice of default has been served upon the company; or

(b) from the consideration of the report of an inspector appointed under section 96 it appears that the company has committed a breach of trust.

(2) Upon the winding-up of a Trust Company every person who has been a director of the company at any time within the period of two years immediately preceding the commencement of the winding-up shall be liable for the balance unpaid on every share which he may have transferred during such two years.

98. Where a Trust Company holds the office of executor, administrator or trustee, every person employed by the company to discharge any of the duties of such office shall, in respect of the duties entrusted to him, be personally responsible to the court and be subject to the process of the court, as though he had been personally appointed to such office.

99.—(1) Any director, officer or servant of a Trust Company who wilfully and with intent to defraud neglects to make any entry in the books of the company which it is his duty to make shall be guilty of a misdemeanour.

(2) Any director, officer or servant of a Trust Company, who wilfully and with intent to defraud makes or abets the making of any false entry in the books of the company, or subscribes or exhibits any false document with intent to deceive any person appointed under this Part of this Ordinance to investigate the affairs and management of the company shall be guilty of a misdemeanour.

(3) Any director, officer or servant of a Trust Company who refuses to produce for examination to any person appointed under this Part of this Ordinance to investigate the affairs and management of the company all books and documents relevant to such investigation which are in his custody or control shall be guilty of a misdemeanour.

(4) Any Trust Company which makes default in forwarding to the Registrar of Companies the verified statement as required by section 95 shall be liable on summary conviction to a fine not exceeding fifty dollars for every day during which the default continues, in addition to any penalty which it may incur under the Companies Ordinance, 1932, and any director or manager of the company who knowingly and wilfully authorises the default shall be liable on summary conviction to the like penalty.

100. No Trust Company shall be appointed to be guardian of the person of an infant or committee of the person of a lunatic.

101. No member of a Trust Company shall at any time hold shares in the capital of the company to an amount exceeding one fifth of the issued capital of the company for the time being.

102. So long as any estate in respect of which a Trust Company is trustee shall remain in whole or in part unadministered, it shall not be lawful to proceed to wind up the company voluntarily, unless with the sanction of the court, and it shall be lawful for any person interested in such estate, or who may have any claim in respect thereof, to apply to the court in a summary way by motion to restrain any director or any shareholder from disposing of any shares which such director or shareholder may hold in the company

or to restrain the winding up voluntarily of the company; and the court shall have power to make such order as it deems just.

Liability
and powers
of Trust
Company.

103. Subject to the provisions of this Part of this Ordinance, the liability of every Trust Company to the person or persons interested in any estate held by the company as executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee or in any other official or business capacity shall be the same as if the estate had been held by a private person in the like capacity; and the powers of the company shall be the same as those of a private person in the like capacity.

Registration
of a Trust
Company as
shareholder,
etc. not
notice of
trust.

104. Neither the application by a Trust Company for registration as a member or shareholder in the books of any company or corporation nor the entry of the name of a Trust Company in the books of any company or corporation shall constitute notice of trust, and no company or corporation shall be entitled to object to enter the name of a Trust Company on its books by reason only that the company may be or is a trustee, and, in dealings with property, the fact that the person or one of the persons dealt with is a Trust Company shall not of itself constitute notice of a trust.

Unclaimed
money to be
paid into
court.

105. All money and securities which shall remain in the hands of a Trust Company, as trustee, unclaimed by the person entitled to the same for a period of six years after the time when the same shall have become payable to such person (except where payment has been restrained by order of a court of competent jurisdiction), together with such interest, if any, as shall have been received by the company in respect thereof, less any commission or other charges properly chargeable by the company, shall be paid by the company into court under and in accordance with section 62 of this Ordinance. Provided that it shall not be necessary for the company to comply with the provisions of this section more often than once in any year nor shall it be necessary for the company to obtain the concurrence or consent of any person to such payment into court.

Fees payable
by Trust
Companies.
Second
Schedule.

106.—(1) There shall be paid by every Trust Company to the Registrar of Companies, in respect of the matters mentioned in the Second Schedule, the several fees specified therein.

(2) All such fees shall be paid by the Registrar of Companies into the Treasury.

(3) It shall be lawful for the Governor in Council from time to time, by notification in the Gazette, to add to or alter the said Schedule.

PART IX.

GENERAL PROVISIONS.

Indemnity.
15 Geo. 5.
c. 19, s. 66.

107. This Ordinance, and every order purporting to be made under this Ordinance, shall be a complete indemnity to any bank and to all persons for any acts done pursuant thereto, and it shall not be necessary for any bank or person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it.

108.—(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 use, the following provisions shall apply:

Right of trustee to plead statute of limitations.
51 & 52 Vict. c. 59 ss. 1, 8.
(*cf.* No. 2 of 1901, s. 5.)

(a) all rights and privileges conferred by any statute of limitations 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: and

(b) if the action or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations 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 to 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 statute 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, "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, but not the Official Trustee.

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

(5) This section shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute of limitations.

109. The Trustees Ordinance, 1901, is repealed:

Repeal of Ordinance No. 5 of 1901.
15 Geo. 5, c. 19, s. 70.

Provided that without prejudice to the provisions of the Interpretation Ordinance, 1911—

Ordinance No. 31 of 1911.

(a) nothing in this repeal shall affect any vesting order or appointment made or other thing done under any enactment of the Ordinance so repealed, and any order or appointment so made may be revoked or varied in like manner as if it had been made under this Ordinance;

(b) references in any document to the Trustees Ordinance, 1901, or to any enactment therein shall be construed as references to this Ordinance or to the corresponding enactment in this Ordinance.

Passed the Legislative Council of Hong Kong, this 26th day of July, 1934.

R. A. C. NORTH,
Deputy Clerk of Councils.

FIRST SCHEDULE. [s 76]

Rules relating to the Administration of Trust Funds.

Affidavit to be filed by trustee desiring to pay money to account of, or to deposit shares, etc., in name of, Official Trustee.

1. Any trustee desiring to pay money to the account of, or to transfer or deposit shares, stock, or securities into or in the name of, the Official Trustee under the provisions of the Trustee Ordinance, 1933, relating to the administration of trust funds, shall file an affidavit setting forth—

(1) his own name and address;

(2) the place where he is to be served with any petition or any notice of any proceeding or order of the court, or of the judge in chambers, relating to the trust fund;

(3) the amount of money, shares, stock, or securities, which he proposes to pay or transfer into or deposit in court, to the credit of the trust;

(4) a short description of the trust and of the instrument creating it;

(5) the name of the persons interested in or entitled to the fund, to the best of the knowledge and belief of the trustee; and

(6) the submission of the trustee to answer all such inquiries relating to the application of the money, shares, stock, or securities paid in, transferred, or deposited under the Ordinance as the court or a judge in chambers may think proper to make or direct.

Directions for payment of money, etc.

2. The Official Trustee, on production of an office copy of the affidavit, shall give the necessary directions for payment, transfer, or deposit, and place the money, shares, stock, or securities, to the account of the particular trust; and shall grant a certificate of such payment, transfer, or deposit.

Investment of moneys.

3. Where it is deemed unnecessary to have the money, or the dividends or interest of the shares, stock, or securities, invested in the meantime, the affidavit shall further contain a statement to that effect. But where the affidavit contains no such statement, the Official Trustee shall be at liberty to invest, as soon as conveniently may be, the money paid in or the dividends or interest on the shares, stock, or securities transferred, and all accumulations thereof, in or upon such investments and securities as the court may direct or approve, and every such investment shall be made in the matter of the particular trust: Provided that where at any time a request in writing, by or on behalf of any party claiming to be entitled, that such investment may be discontinued is left with the Official Trustee, he shall be at liberty to cease making any further investment in the matter of the particular trust until the court has made some order in that behalf.

Notice of payment, etc., to *cestui que trust*.

4. The trustee, having made the payment, transfer, or deposit, shall forthwith give notice thereof to the several persons named in his affidavit as interested in or entitled to the fund.

Applications relating to fund.

5. Such persons, or any of them, or the trustee may apply by petition, or, in a case where the fund does not exceed two thousand dollars in value, by summons, respecting the investment, payment out, or distribution of the fund or of the dividends or interest thereof.

6. The trustee shall be served with notice of any application made to the court or in chambers respecting the fund, or the dividends or interest thereof, by any person interested therein or entitled thereto. Notice to trustee of application by *cestui que trust*.

7. The persons interested in or entitled to the fund shall be served with notice of any application made by the trustee to the court or in chambers respecting the fund or the dividends or interest thereof. Notice to *cestui que trust* of application by trustee.

8. No petition shall be set down to be heard, and no summons shall be sealed, until the petitioner or applicant has first named in his petition or summons a place where he may be served with any petition or summons or notice of any proceeding or order of the court relating to the fund. Place for service on applicant.

9. Every petition presented, summons issued, and affidavit filed under the said provisions shall be entitled in the matter of the Ordinance and in the matter of the particular trust. Title of petition, etc.

Second Schedule. [s. 106]

Fees to be paid by Trust Companies to the Registrar of Companies.

1. On application for registration under section 77	\$5.00
2. For certificate of registration under section 78—	
(a) where the authorised capital does not exceed \$500,000	\$100.00
(b) where the authorised capital exceeds \$500,000 but does not exceed \$1,000,000	\$150.00
(c) where the authorised capital exceeds \$1,000,000	\$200.00
3. On filing annual statement under section 95	\$10.00

HONG KONG.

No. 19 OF 1934.

I assent.

W. PEEL,
Governor.

27th July, 1934.

An Ordinance to amend the Crown Counsel's Fees Ordinance,
1903.

[27th July, 1934.]

BE it enacted by the Governor of Hong Kong, with the
advice and consent of the Legislative Council thereof, as
follows:—

Short title.

1. This Ordinance may be cited as the Crown Counsel's
Fees Amendment Ordinance, 1934.Amendment
of Ordin-
ance No. 24
of 1903, s. 2.**2.** Section 2 of the Crown Counsel's Fees Ordinance,
1903, is amended by the insertion of the words "or any
Assistant Attorney General or any Counsel attached to the
Attorney General's department" immediately after the words
"Attorney General" in each sub-section thereof.Passed the Legislative Council of Hong Kong, this
26th day of July, 1934.R. A. C. NORTH,
Deputy Clerk of Councils.

HONG KONG.

No. 20 OF 1934.

I assent.

L.S.

W. PEEL,
Governor.

27th July, 1934.

An Ordinance to provide for the Incorporation of the Regional Superior in Hong Kong of the Foreign Mission Sisters of St. Dominic commonly known as Maryknoll Sisters.

[27th July, 1934.]

BE it enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the "Foreign Mission Sisters of St. Dominic" Incorporation Ordinance. Short title.

2. The Regional Superior for the time being in the Colony of Hong Kong of the Foreign Mission Sisters of St. Dominic shall be a corporation sole (hereinafter called the corporation) and shall have the name of "The Regional Superior in Hong Kong of the Foreign Mission Sisters of St. Dominic" and in that name shall have perpetual succession and shall and may sue and be sued in all courts in the Colony and shall and may have and use a common seal. Incorporation.

3.—(1) Subject to the provisions of sub-section (2) the corporation shall have power to acquire, accept leases of, purchase, take, hold and enjoy any lands, buildings, messuages or tenements of what nature or kind so ever and wheresoever situated, and also to invest moneys upon mortgage of any lands, buildings, messuages or tenements, or upon the Mortgages, debentures, stocks, funds, shares or securities of any government, municipality, corporation, company or person, and also to purchase, acquire and possess vessels and other goods and chattels of what nature and kind soever. Powers of Corporation.

(2) Notwithstanding the provisions of sub-section (1), the corporation shall not acquire any immovable property in the Colony unless it shall have previously obtained the special consent of the Governor in Council in each case.

(3) The corporation shall further have power by deed under its seal to grant, sell, convey, assign, surrender, exchange, partition, yield up, mortgage, demise, reassign, transfer or otherwise dispose of any lands, buildings, messuages, tenements, mortgages, debentures, stocks, funds,

shares or securities, or vessels or other goods and chattels, which are for the time being vested in or belonging to the corporation, upon such terms as to the corporation may seem fit.

Property transferred to corporation to pass to successors.

4. The legal estate in any property whatsoever transferred to the corporation in any manner whatsoever shall in the event of the death of the Regional Superior for the time being in Hong Kong of the Foreign Mission Sisters of St. Dominic, or in the event of her ceasing to hold office as such Regional Superior, pass to her successor in such office when appointed.

Appointment of Regional Superior.

5.—(1) Sister Mary Paul McKenna the present Regional Superior in Hong Kong of the Foreign Mission Sisters of St. Dominic, having furnished to the Governor satisfactory evidence of her appointment to that office, shall for the purposes of this Ordinance be deemed to be the Regional Superior in Hong Kong of the Foreign Mission Sisters of St. Dominic until the appointment in her stead of some other person as such Regional Superior.

(2) When any other person is appointed to the office of Regional Superior in Hong Kong of the Foreign Mission Sisters of St. Dominic such person shall within three weeks after her appointment or within such further time as may be allowed by the Governor furnish to the Governor satisfactory evidence of her appointment.

(3) A notification in the Gazette under the hand of the Colonial Secretary that such evidence has been furnished to the Governor by such person shall be conclusive evidence of such appointment.

Execution of documents.

6. All deeds and other instruments requiring the seal of the corporation shall be sealed in the presence of the said Regional Superior or her attorney and shall be signed by her or her attorney, and such signing shall be taken as sufficient evidence of the due sealing of such deeds and other instruments and all deeds, instruments and other documents and writings requiring the signature of the corporation shall be signed by such Regional Superior or her attorney.

Vesting of I.L. No. 2300 and N.K.I.L. No. 1419.

7. All those pieces or parcels of ground registered in the Land Office as Inland Lot No. 2300 and New Kowloon Inland Lot No. 1419 together with all rights, easements and appurtenances thereto belonging or usually held, occupied or enjoyed therewith, are hereby transferred to and vested in the Corporation for the unexpired residues of the terms of years created by the Crown Leases thereof, subject to the payment of the rents and the performance and observance of the covenants and conditions therein contained and subject to all mortgages and charges in respect thereof.

Saving of the rights of the Crown and of certain other persons.

8. Nothing in this Ordinance shall affect or be deemed to affect the rights of His Majesty the King, His Heirs or successors, or the rights of any body politic or corporate or of any other person except such as are mentioned in this Ordinance and those claiming by, from or under them.

Passed the Legislative Council of Hong Kong, this 26th day of July, 1934.

R. A. C. NORTH,
Deputy Clerk of Councils.