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SCHEDULE

## CHAPTER 250

## TRUSTEE

*An Act relating to trustees.*

1979-3.  
1979-44.  
1988-6.

[1st January, 1980.] Commence-  
ment.  
1979/188.

## PART I

*Preliminary*

1. This Act may be cited as the *Trustee Act*.

Short title.

2. For the purposes of this Act

Interpre-  
tation.

"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;

"bank" means the Barbados National Bank and any bank licensed under the *Banking Act* to carry on banking business in Barbados; Cap. 322.

"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, together with the performance of all formalities required by law for the validity of the conveyance;

"court" means the High Court;

"income" includes rents and profits;

"instrument" includes an Act of Parliament;

"land" has the meaning assigned to it by the *Property Act*;

Cap. 236.

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"local newspaper" means a newspaper printed and published in Barbados;

Cap. 46. "mental patient" has the meaning assigned to it by the *Mental Health Act*;

"mortgage" relates to every estate and interest in property regarded in equity as merely a security for money;

"pay" as applied in relation to stocks and securities and in connection with the expression "into court" includes the deposit or transfer of the same in accordance with the orders of court;

Cap. 249. "personal representative" has the meaning assigned to it by the *Succession Act*;

"possession" includes receipt of rents and profits or the right to receive the same, if any;

"property" includes real and personal property, and any estate, share and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

"purchaser" means a purchaser in good faith for valuable consideration, and includes a lessee, mortgagee or the person who, for valuable consideration, acquires an interest in property; and where the context so requires, "purchaser" includes an intending purchaser; and "purchase" has a meaning corresponding with that of "purchaser";

1988-6. "Registrar" means the Registrar of Corporate Affairs and Intellectual Property;

"rights" includes estates and interests;

"securities" includes stocks, funds, and shares and "securities payable to bearer" includes securities transferable by delivery or by delivery and endorsement;

Cap. 236. "settlement" has the same meaning as in the *Property Act*;

"stock" includes fully paid up shares, and so far as relates to vesting orders made by the court under this Act, includes any fund, annuity, or security transferable in books kept by

any company or society or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein;

“transfer” in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, or thing on the part of the transferor to effect and complete the title in the transferee;

“trust” does not include the duties incident to an estate or interest 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; “trustee” includes however, a personal representative, and “new trustee” includes an additional trustee;

“trust corporation” means the Public Trustee or a body corporate either appointed by the court in any particular case to be a trustee, or authorised by rules made under section 14 of the *Public Trustee Act* to act as a custodian trustee; Cap. 248.

“trust funds” includes any funds in the hands of a trustee, whether at the time in a state of investment or not.

## PART II

### *Investments by Trustees*

3. (1) A trustee may invest any property in his hands, whether at the time in a state of investment or not, in any manner specified in the Schedule, and may also from time to time vary any such investments. Authorised  
investments.  
Schedule.

(2) No provision relating to the powers of the trustee contained in any instrument (not being an enactment or an instrument made under an enactment) made before 1st January, 1980, shall limit the powers conferred by this section, but those powers are exercisable only in so far as a contrary intention is not expressed in any Act, or instrument made under an enactment, whenever passed or made, and so

relating or in any other instrument so relating which is made after that date.

(3) Any power (however expressed) to invest property in any investment for the time being authorised by law for the investment of trust property, being a power conferred on a trustee before 1st January, 1980, or conferred on him under any enactment passed before that date, shall have effect as a power to invest property in like manner and subject to the like provisions as under this Act.

Duties of  
trustees in  
choosing  
investments.

4. (1) In the exercise of his powers of investment a trustee shall have regard to

(a) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust; and

(b) the suitability to the trust of investment of the description of investment proposed and of the investment proposed as an investment of that description.

(2) Before exercising any power conferred by section 3(1) or before investing in any such manner in the exercise of a power falling within section 3(3), a trustee shall obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in subsections (1)(a) and (b).

(3) A trustee retaining any investment made in the exercise of such powers shall determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice and shall obtain and consider such advice accordingly.

(4) For the purposes of subsections (2) and (3), proper advice is the advice of a person who is reasonably believed by the trustee to be qualified by his ability in and practical experience of financial matters, and such advice may be given by a person notwithstanding that he gives it in the course of his employment as an officer or servant.

(5) A trustee shall not be treated as having complied with subsection (2) or (3) unless the advice was given or has been subsequently confirmed in writing.



(6) Subsections (2) and (3) shall not apply to one of two or more trustees where he is the person giving the advice required by this section to his co-trustees, and shall not apply where powers of a trustee are lawfully exercised by an officer or servant competent under subsection (4) to give proper advice.

(7) Without prejudice to section 7, the advice required by this section shall not include, in the case of a loan on the security of freehold or leasehold land in Barbados, advice on the suitability of the particular loan.

5. 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 law.

Power to retain investment which has ceased to be authorised.

6. (1) Nothing in this Act shall authorise a trustee to invest in securities payable to bearer unless those securities are purchased through a bank and until sold retained at all times by the bank for safe custody and collection of income.

Investment in bearer securities.

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

(3) The purchase through or retention by a bank of bearer securities in compliance with subsection (1) shall not operate as a contravention of any direction in the instrument creating the trust to the effect that investments shall be retained or made in the name of the trustee.

7. (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

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

- (a) that in making the loan the trustee was acting upon a report as to the value of the property made by a registered real estate agent of at least 5 years' standing or instructed and employed independently of any owner of the property; and
- (b) that the amount of the loan does not exceed two-thirds parts of the value of the property as stated in the report; and

1979-44.

(c) that the loan was made under the advice of such real estate agent as 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 1st January, 1980.

Liability  
for loss by  
reason of  
improper  
investment.

8. (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 at the rate payable under the mortgage.

(2) This section applies to investments made before as well as after 1st January, 1980.

Powers sup-  
plementary  
to powers  
of invest-  
ment.

9. (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that the money shall not be called in during any period not exceeding 7 years from the time when the loan was made, provided interest be paid within a specified time not exceeding 30 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 for the maintenance and protection of the property.

(2) Where trustees propose to sell land for an estate in fee simple or for a term having at least 20 years to run, they 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 a mortgage of the land sold with or without the security of any other property, such mortgage, if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire, hurricane and earthquake to the full replacement cost 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 any trustees in respect of any holding in the company, they may, as to all or any of the securities

- (a) exercise the right and apply capital money subject to the trust in payment of the consideration; or
- (b) renounce the right; or

(c) assign for the best consideration that can be reasonably obtained the benefit of the 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, so however, that the consideration for any assignment in pursuance of paragraph (c) 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 subsection (1), or the sale referred to in subsection (2), is made under the order of the court, the powers conferred by those subsections respectively shall apply only if and as far as the court may by order direct.

Power to deposit money at bank and to pay calls.

10. (1) Trustees may, pending the negotiation and preparation of any mortgage, 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.

(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*

Powers of trustees for sale to sell by auction etc.

11. (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(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.

(3) Where the trust or power authorises an exchange, the trustee may give or receive any money for equality of exchange.

12. Where a trust for sale or exchange, or a power of sale or exchange of property, is vested in a trustee, he shall have full power to convey, transfer or dispose of the property in whatever manner and by whatever instrument may be necessary.

Trustee exercising power of sale shall have power to convey.

13. (1) Any money received upon any sale or for equality of exchange under sections 11 and 12 shall be laid out in the manner provided in the instrument creating the trust for sale or exchange, or the power of sale or exchange, as the case may be.

Application of money in hands of trustees for sale or having powers of sale or exchange.

(2) Where the instrument does not make any provision for dealing with such money, then the trustees shall with all convenient speed apply the same in the purchase of other land in Barbados for an estate in fee simple in possession, or upon the security of real estate in Barbados.

(3) Any land purchased or taken in exchange under subsections (1) and (2) and any land upon the security of which the trustees have invested money arising under subsections (1) and (2) shall be settled and assured upon and for the trusts, intents and purposes, and with, under and subject to the powers, provisos and declarations to which the land sold or given in exchange was or would have been subject, or as near thereto as the deaths of parties and other intervening circumstances will permit.

(4) Trustees exercising a trust for sale or power of sale or exchange under sections 11 and 12 may apply any money received under the sale or for equality of the exchange, or any part thereof, in lieu of purchasing lands or investing upon the security thereof in accordance with subsections (2) and (3), in or towards paying off or discharging any mortgage or other charge or encumbrance which affects any land then subject to the same trusts as those to which the land sold or given in exchange was subject.

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

**14. (1)** Subject to subsection (2), 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 so required by any person having beneficial interest, present or future, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed or other 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.

(2) Where by the terms of the instrument, if any, creating the trust 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, the written consent of that person shall be obtained with respect to the renewal on the part of the trustee.

(3) If money is required to pay for the renewal of any lease or for equality of exchange under sections 12 to 14, the trustee may

- (a) pay the money out of any funds then in his hands in trust for the persons beneficially interested in the lands to be taken in exchange or to be comprised in the renewed lease; and
- (b) if he has not in his hands sufficient funds for the purpose, raise the money required
  - (i) by mortgage of the hereditaments to be received in exchange or to be comprised in the renewed lease; or
  - (ii) by mortgage of any other hereditaments subject to the trusts to which the hereditaments taken in exchange or comprised in the renewed lease are subject.

(4) This section applies to trusts of leaseholds created by instruments coming into effect after 17th July 1886.

No sale or exchange to be made without requisite consent.

**15. (1)** No sale or exchange under section 11 or 12, and no purchase of land out of money received on any such sale or exchange under section 13, shall be made without the consent of the person appointed to consent by the instrument creating the trust for, or power of, sale or exchange, or if no such person is appointed, then of the person entitled in possession to the

receipt of the rents and profits of the land, if there is such a person under no disability.

(2) Nothing in this section requires the consent of any person where it appears from the instrument creating the trust or power, as the case may be, that such sale, exchange or purchase as is referred to in subsection (1) should be made by the person making the same without the consent of any other person.

(3) For the purposes of this section, a person is deemed to be entitled to the possession or to the receipt of the rents and profits of land or the income of personal property, although his estate or interest may be charged or encumbered, either by himself or by any former owner or otherwise howsoever, to any extent; but the estate or interest of the party entitled to the charge or encumbrance shall not be affected by the acts of the person entitled to the possession or to the receipts of the rent and profits or income, unless he concurs therein.

16. Nothing in sections 11 to 15 empowers a trustee or other person to deal with or affect the estates or rights of any persons except to the extent to which he could have dealt with or affected the estates or rights of such persons if the instrument creating the trust contained an express power for the trustee or other person so to deal with or affect such estates or rights.

No rights other than those under the settlement to be affected.

17. (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

Power to sell subject to depreciatory conditions.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds referred to in subsections (1) and (2).

(4) This section applies to sales and purchases made before or after 1st January, 1980.

Power of  
trustees to  
give  
receipts.

18. 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, but, except where

(a) the sole trustee is a trust corporation; or

(b) the settlement authorises the receipt of money by a sole trustee,

a receipt given by a sole trustee for the proceeds of sale or other money arising under a trust for sale of land, or money arising under the *Property Act* shall not discharge the payer of such proceeds or capital money.

Cap. 236.

Power to  
compound  
liabilities.

19. (1) 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, as the case may be, think fit

(a) accept any property, real or personal, 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, real or personal, for any debt, or for any property, real or personal, 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 trust; or
- (g) settle and fix reasonable fees of remuneration for any professional person or any trust corporation appointed by him or by them, as the case may be, under section 38 of the *Succession Act*, to act as trustee of any property and authorise such professional person or trust corporation to charge and retain such remuneration out of that property, Cap. 249.

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 seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or by them, as the case may be, in good faith.

**20. (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 etc.

**(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, or to trustees of a settlement for the purposes of the *Property Act*, not being also trustees exercising the powers conferred by section 27 of that Act. Cap. 236.

**21.** 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. Protection to purchasers and mortgagees dealing with trustees.

Devolution  
of powers  
or trusts.

22. (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 their survivors for the time being.

(2) Until the appointment of new trustees, the personal representatives 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.

23. A trustee may insure against loss or damage by fire, explosion, impact, lightning, thunderbolt, hurricane, earthquake, flooding, subsidence or landslip any building or other insurable property to any amount, including the amount of any insurance already on foot not exceeding the full replacement cost 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.

Application  
of insurance  
money  
where policy  
kept up  
under any  
trust, power  
or obligation.  
Cap. 236.

24. (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 or to a settlement within the meaning of the *Property Act*, whether by fire, hurricane, earthquake or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any statutory power or otherwise, or by a tenant for life impeachable for waste, be capital for the purposes of the trust or settlement, as the case may be.

(2) If any money mentioned in subsection (1) is receivable by any person, other than the trustees of the trust or settlement, 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 settlement, or, if there are no trustees capable of giving a discharge therefor, into court.

(3) Any money mentioned in subsection (1)

- (a) if it was receivable in respect of settled land within the meaning of the *Property Act*, or any building or works thereon, shall be invested or applied by the trustees, under the direction of the court; Cap. 236.
- (b) if it was receivable in respect of chattels settled so as to devolve therewith as nearly as may be in accordance with the law or practice in force at the date of the settlement shall be applicable by the trustees under the direction of the court;
- (c) 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;
- (d) 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) Insurance money, or any part thereof, may also be applied by the trustees, 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 prejudices or affects 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 rights of any mortgagee, lessor, or lessee whether under any statute or otherwise.

(6) This section applies to policies effected either before or after 1st January, 1980, but only to money received after that date.

Deposit of  
documents  
for safe  
custody..

**25.** Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or any 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.

Reversion-  
ary in-  
terests,  
valuation  
and audit.

**26.** (1) Where trust property includes any share, estate 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 place any *distringas* notice or apply for any stop or other like order upon any securities or other property out of or on which such share, estate or interest or other thing in action 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, so however, that nothing in this subsection shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share, estate 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 employ a qualified valuer to 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 three years 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 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 cost of such 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.

27. (1) Subject to subsection (5), trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether an attorney-at-law, 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 and supervised with a reasonable degree of care.

Power to  
employ  
agents.

(2) Subject to subsection (5), 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 assurances of, or managing or cultivating, or otherwise administering any property, real or personal, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside Barbados 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) Subject to subsection (5), and without prejudice to the generality of subsection (1) or subsection (2)

- (a) a trustee may appoint an attorney-at-law 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 attorney-at-law 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 attorney-at-law shall have the same statutory validity and effect as if the person appointing the attorney-at-law had not been a trustee;
- (c) a trustee may appoint a banker or attorney-at-law 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 attorney-at-law 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.

(4) Subsection (3) applies whether the money or valuable consideration or property was or is received before or after 1st January, 1980.

(5) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act and any enactment replaced by this Act had not been passed, in case he permits any money, valuable consideration, or property to remain in the hands or under the control of any agent for a period longer than is reasonably necessary to enable that agent to pay or transfer the same to the trustee.

**28.** 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 any 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.

**29. (1)** A trustee intending to remain out of Barbados for a period exceeding 1 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 during his absence from Barbados of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person, so however, 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 subsection.

Power to delegate trusts during absence abroad.

(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 Barbados, and shall be revoked by his return.

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(4) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding 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 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.

(5) 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 such stock but not including the power of delegation conferred by this section.

(6) 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.

1979-44.

Protection  
against  
liability in  
respect of  
rents and  
covenants.

**30. (1)** Where a personal representative or trustee liable 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 pay out of the property demised or granted, although the period for



paying 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 real and personal 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, and
- (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 any 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 an instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; "lessee" and "grantee" include persons respectively deriving title under them.

31. (1) With a view to the conveyance to, or distribution among, the persons entitled to any real or personal property, the trustees of a settlement or of a disposition on trust for sale or personal representative may give notice by publishing advertisements once in the *Official Gazette* and twice in each of the local newspapers, and by publishing such other like notices,

Protection  
by means  
of advertise-  
ments.

including notices outside Barbados, as the court may direct in any special case, of their intention to make conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within not less than 2 months of the publication of the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

1979-44.

(2) At the expiration of such time as aforesaid 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

(a) prejudices 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) frees the trustees or personal representatives from any obligation to make inquiries and searches or obtain official certificates of search 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  
with respect  
to notice.

32. 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.

33. 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, so however, that

Exoneration of trustees in respect of certain powers of attorney.

- (a) nothing in this section affects 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.

34. (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 default, and not for those of any other trustee, nor for those of any banker, broker, or other person with whom any trust money or securities may be deposited, nor for any other loss, unless the same happens through his own wilful default.

Implied indemnity of trustees.

(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.

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

Power to apply income for maintenance and to accumulate surplus income during a minority. 1979-44.

- (a) during the minority of any such person, if his estate or 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

- (i) any other fund applicable to the same purposes; or
- (ii) any person bound by law to provide for his maintenance or education; and
- (b) if such person on attaining the age of majority has not a vested estate or interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (3) to him, until he either attains a vested estate or interest therein or dies, or until failure of his estate or interest.

(2) 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 mentioned in subsection (1), the trustees shall have regard to the age of the minor 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.

(3) During the minority of any such person, if his estate or 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

(a) if any such person

- (i) attains the age of majority, or marries under that age, and his estate or interest in such income during his minority or until his marriage is a vested estate or interest, or
- (ii) on attaining the age of majority, or on marriage under that age, becomes entitled to the property from which such income arose in fee simple, or absolutely,

the trustees shall hold the accumulations in trust for such person absolutely, but without prejudice to any provision

with respect thereto contained in any settlement by him made under any statutory powers during his minority, and so that the receipt of such person after marriage, and though still a minor, shall be a good discharge; and

- (b) in any other case the trustees shall, notwithstanding that such person had a vested estate or 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, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom,

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

(4) This section applies in the case of a contingent estate or 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 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 \$10 per centum per annum.

(5) A contingent or future specific devise or bequest of property, a contingent residuary devise of land and a specific or residuary devise of land to trustees upon trust for persons whose interests are contingent or executory will carry the intermediate income of that property from the death of the testator except so far as that income or any part thereof may be otherwise expressly disposed of.

(6) 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 minority of the annuitant shall be held in trust for the annuitant or his personal representative absolutely.

(7) This section does not apply where the instrument, if any, under which the interest arises came into operation before 1st January, 1980.

Power of  
advance-  
ment.

36. (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 estate or 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, so however, 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, estate 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 estate or interest, whether vested or contingent, in the money paid or applied unless such person is in existence and of the age of majority and consents in writing to such payment or application.
- (2) This section applies only where the trust property consists of
- (a) money or securities which are not by statute or in equity considered as land; or
  - (b) property held upon trust for sale, calling in and conversion and the proceeds of such sale, calling in and conversion are not in equity considered as land.

(3) The powers conferred by this section may be exercised by a surviving spouse as trustee of any property of a minor appropriated in accordance with sections 36 and 37 of the *Succession Act*.

Cap. 249.

(4) This section does not apply to trusts constituted or created before 1st January, 1980.

37. (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 referred to as "the principal beneficiary") for the period of his life or any less period, then, during that period (in this section referred to as "the trust period") that income shall, without prejudice to any prior estate or interest, be held

Protective trusts.

- (a) upon trust for the principal beneficiary until whichever of the following events shall first occur
  - (i) the trust period expires, or
  - (ii) the principal beneficiary, whether before or after the termination of any prior estate or interest, does or attempts to do or suffers any act or thing, or until any other event, not being an advance under any statutory or express power, happens whereby, if during the trust period the said income were payable to the principal beneficiary absolutely, he would be deprived of the right to receive the same or any part thereof; and
- (b) upon trust, where any of the events referred to in sub-paragraph (ii) of paragraph (a) happens during the subsistence of the trust period, to apply the said income, as the trustees in their absolute discretion, without being liable to account for the exercise of their discretion, think fit, for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other of the following persons
  - (i) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any, and

(ii) if as often as and while there is no living issue of the principal beneficiary, the principal beneficiary and his or her wife or husband, if any, and the persons who, if the principal beneficiary were actually dead without having married would for the time being be his next of kin, so that the trustees in the exercise of their discretion may apply any income accrued but unapplied in any previous year for the purposes of the trusts implied as aforesaid in any subsequent year.

(2) This section does not apply to trusts coming into operation before 1st January, 1980, and has effect subject to any variation of the trusts implied as aforesaid containing 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*

Power of appointing new or additional trustees.

38. (1) Where a trustee, whether original, substituted or additional, and whether appointed by a court or otherwise, is dead, or remains out of Barbados for more than 12 months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, then

- (a) the 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 for the time being, or the personal representatives of the last surviving or continuing trustee, may, in 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



Barbados, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, 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.

(3) Where a corporation being a trustee is or has been dissolved, either before or after 1st January, 1980, 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 subsection (1) or any 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) A sole or lasting 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, whether original, substituted or additional and whether appointed by the court or otherwise, then and in any such case

(a) the 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,

the trustees for the time being may, in writing, appoint one or more other persons, whether or not being the persons exercising the power, to be additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any enactment provides to the contrary.

(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 person of unsound mind or person requiring special care, being a trustee, is also entitled in possession to some beneficial estate or interest in the trust property, no appointment of a new trustee in this place shall be made by the continuing trustees under this section, unless leave has been given by the Chief Justice to make the appointment.

Supple-  
mental pro-  
visions as  
to appoint-  
ment.

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

(a) the number of trustees may be increased; and

(b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part of the trust property, notwithstanding that no new trustees are 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 so 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 Act 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.

40. (1) A statement, contained in any instrument coming into operation after 1st January, 1980, by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of Barbados for more than 12 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, be conclusive evidence of the matter stated.

Evidence as to a vacancy in a trust.

(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.

41. (1) Where a trustee is desirous of being discharged from the trust or a severable part of 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

Retirement of trustee without a new appointment.

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aforesaid by deed declares that he is desirous of being discharged from the trust or the severable part thereof, 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 or a severable part thereof, and shall, by the deed, be discharged therefrom under this Act, 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.

42. (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 1st January, 1980 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 1st January, 1980 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 1st January, 1980, 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 subsections (1) and (2), 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 rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture; or
- (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.

(5) In subsection (4), "lease" includes an underlease and an agreement for a lease or underlease.

(6) For purposes of registration of the deed in any registry, the person making the declaration expressly or impliedly, shall be deemed the conveying party, and the conveyance shall be deemed to be made by him under a power conferred by this Act.

(7) This section applies to deeds of appointment or discharge executed on or after the 17th day of July, 1886.

## PART V

### *Powers of the Court*

Power of  
court to  
appoint  
new trustees.

43. (1) The court may, whenever it is expedient to appoint a new trustee, and it is found inexpedient, difficult or impracticable to do so without the assistance of the court, make an order appointing new trustees either in substitution for or in addition to any existing trustees, or although there is no existing trustee.

(2) In particular and without prejudice to the generality of subsection (1), the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved, or who for any other reason whatever appears to the court to be undesirable as a trustee.

(3) 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.

(4) Nothing in this section gives power to appoint an executor or administrator.

Power of  
court to  
authorise  
remunera-  
tion.

44. The court may, in any case in which the circumstances appear to it so to justify, authorise any person to charge such remuneration for his services as trustee as the court determines.

45. Every trustee appointed by the court shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Power of  
new trustee  
appointed  
by the  
court.

46. (1) Subject to subsection (2), where

Vesting or-  
der of land.

- (a) the court appoints a trustee, or where a trustee has been appointed out of court under any statutory or express power; or
- (b) a trustee entitled to or possessed of any land or estate 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
  - (i) is under disability, or
  - (ii) is out of the jurisdiction of the court, or
  - (iii) cannot be found, or, being a corporation, has been dissolved; or
- (c) it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any estate or interest in land; or
- (d) it is uncertain whether the last trustee known to have been entitled to or possessed of any estate or interest in land is living or dead; or
- (e) there is no personal representative of a deceased trustee who was entitled to or possessed of any estate or interest in land, or it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any estate or interest in land; or
- (f) a trustee jointly or solely entitled to or possessed of any estate or 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 or transfer of the land or estate or interest or a release of the right, convey or transfer to the land or estate or interest or to release the

right, and has wilfully refused or neglected to convey or transfer the land or estate or interest or release the right for 28 days after the date of the requirement; or

- (g) land or any estate or 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 Act referred to as a “vesting order”), vesting the land or estate 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.

- (2) Where an order made under subsection (1)

- (a) is consequential on the appointment of a trustee, the land, estate or interest therein shall be vested for such estate or interest as the court may direct in the persons who on the appointment are the trustees; and

- (b) 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, estate, interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

Orders as to  
contingent  
rights of  
unborn  
persons.

47. Where any estate or 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 estate or interest on any trust, the court may make an order

- (a) releasing the land or estate or interest therein from the contingent right; or
- (b) 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 to or possessed of the land.



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

Vesting order in place of conveyance or transfer by a mortgagee, who is a minor.

49. Where

- (a) a mortgagee of land has died without having entered into possession or into the receipt of the rents and profits thereof; and
- (b) the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that person consents to an order for the reconveyance of the land,

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

the court may make an order vesting the land in such person in such manner and for such estate or interest as the court directs, where

- (c) a personal representative or devisee of the mortgagee is out of the jurisdiction of the court or cannot be found, or, being a corporation, has been dissolved, or
- (d) a personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance or a transfer of the land has stated in writing that he will not convey or transfer the same or does not convey or transfer the same for the space of 28 days after a proper instrument for conveying or transferring the land has been tendered to him by or on behalf of the person so entitled, or
- (e) it is uncertain which of several devisees of the mortgagee was the survivor, or
- (f) it is uncertain whether the personal representative of the mortgagee or the survivor of several devisees of the mortgagee is living or dead, or
- (g) there is no personal representative to a mortgagee who has died intestate as to the land, or it is uncertain who is the personal representative or devisee of a deceased mortgagee.

Vesting  
order conse-  
quential on  
order for  
sale or  
mortgage of  
land.

**50.** 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 estate or 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 Act, 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 conse-  
quential on  
judgment  
for specific  
perfor-  
mance.

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

- (a) that any of the parties to the action are trustees of any estate or interest in the land or any part thereof within the meaning of this Act; or
- (b) that the estates or 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 estates or interests of persons who, on coming into existence, would be trustees within the meaning of this Act,

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.

Effect of  
vesting  
order.

**52.** 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

- (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 capacity, as if such person had existed and been of capacity and had duly executed all proper conveyances or transfers of 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 and had been an ascertained and existing person of capacity; and had executed a conveyance or transfer, or release to the effect intended by the order.

53. Where a vesting order can be made under any of the foregoing provisions, the court may, if it is more convenient, appoint the Registrar to convey or transfer the land or any interest therein, or release the contingent right, and a conveyance or transfer or release by the Registrar in conformity with the order shall have the same effect as an order under the appropriate provision.

Power to appoint a person to convey or transfer.

54. (1) Subject to subsection (2), where

(a) the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power; or

Vesting orders as to stock and things in action.

(b) a trustee entitled, whether by way of mortgage or otherwise, alone or jointly with another person, to stock or to a thing in action

(i) is under disability, or

(ii) is out of the jurisdiction of the court, or

(iii) cannot be found, or, being a corporation, has been dissolved, or

(iv) 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 28 days next after a request in writing has been made to him by the person so entitled, or

- (v) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for 28 days next after an order of the court for that purpose has been served on him; or
- (c) 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; or
- (d) stock as standing in the name of a deceased person whose personal representative is under disability; or
- (e) 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.

(2) Where

- (a) an order made under subsection (1) 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) the person whose right is dealt with by an order made under subsection (1) 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.

(3) 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, so however, 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.

(4) 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 Act, may transfer the stock to himself or any other person, according to the order, and all banks, companies and associations shall obey every order under this section according to its tenor.

(5) After notice in writing of an order under this section it shall not be lawful for any bank, company or association to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(6) 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 Act is to be exercised.

(7) The provisions of this Act as to vesting orders shall apply to shares in ships registered in accordance with the law relating to merchant shipping as if they were stock.

55. The powers conferred by this Act as to vesting orders may be exercised for vesting any estate or 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 commenced, 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.

56. Where a minor 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 minor, make an order

Vesting  
orders in  
relation to  
minor's  
beneficial  
interests.

(a) appointing a person to convey or transfer 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.

57. Where a vesting order is made as to any land under this Act or under any Act relating to persons of unsound mind founded on an allegation

Orders made  
upon cer-  
tain allega-  
tions to be  
conclusive  
evidence.

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

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- (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.

Power of  
court to  
authorise  
transactions  
relating  
to trust  
property.

**58. (1)** Where any transaction affecting or concerning any property vested in trustees 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 instrument, if any, creating the trust, or by the 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 made under this section or may make any new or further order.

(3) Any 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.

(4) In this section, "transaction" includes any sale, exchange, assurance, grant, lease, partition, surrender, reconveyance, release, reservation, or other disposition, and any purchase or other acquisition, and any covenant, contract, or option, and any investment or application of capital, whether within the scope of Part II or not, and any compromise or other dealing, or arrangement. 1979-44.

59. (1) Subject to subsection (2), where property is held on trusts arising under any will, settlement or other disposition, the court may if it thinks fit by order approve on behalf of

Jurisdiction of court to vary trusts.

- (a) any person having, directly or indirectly, an estate or interest, whether vested or contingent, under the trusts who by reason of minority or other incapacity is incapable of assenting; or
- (b) any person (whether ascertained or not) who may become entitled, directly or indirectly, to an estate or interest under the trusts as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons, so however, that this paragraph shall not include any person who would be of that description, or a member of that class, as the case may be, if the said date had fallen or the said event had happened at the date of the application to the court; or
- (c) any person unborn; or
- (d) any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not failed or determined,

any arrangement, by whomsoever proposed, and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the trusts, or enlarging the powers of the trustees of managing or administering any of the property subject to the trusts.

(2) Except by virtue of subsection (1)(d) the court shall not approve an arrangement on behalf of any person unless the carrying out of the arrangement would be for the benefit of that person.

1979-44.

(3) In subsection (1), "protective trusts" means the trusts specified in subsections 37(1)(a) and (1)(b) or any like trusts, "the principal beneficiary" has the same meaning as in the said subsection (1), and "discretionary interest" means an interest arising under the trust specified in subsection (1)(b) or any like trust.

1979-44.

(4) The question whether the carrying out of any arrangement would be for the benefit of a person falling within subsection (1)(b) shall be determined by order of the Chief Justice if that person is a person in respect of whose estate a Committee has been appointed.

(5) Nothing in subsections (1) to (4) shall apply to trusts affecting property settled by Act of Parliament.

1979-44.

(6) Nothing in this section shall be taken to limit the powers conferred by section 58.

Persons  
entitled  
to apply  
for orders.

**60.** (1) An order under this Act for the appointment of a new trustee or concerning any estate or 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 Act concerning any estate or 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  
petition  
the court.

**61.** Any person entitled under section 60 to apply for an order may present a petition to the court for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such petition before the court, and may serve such persons with notice of such petition as he may deem entitled to service thereof.



62. Upon the hearing of any such application or petition the court may, if it thinks necessary, direct a reference to the Registrar, to enquire into any facts which require such investigation, or the court may direct such application or petition to stand over to enable the petitioners to adduce evidence or further evidence before the court, or to enable notice, or any further notice, of such application or petition to be served on any person.

Hearing of petition.

63. The court may order the costs and expenses of and incidental to any application or petition for an order under this Act or for any order or declaration in respect of any property subject to a trust, or of and incidental to any such order or declaration, or any document executed or act performed in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made or performed, or out of the income thereof, or to be borne and paid in such manner and by such person as to the court may seem just.

Court may dismiss petition with or without costs.

64. Where in any cause or matter, either by evidence adduced therein or by the admission of the parties, or by a report of the Registrar, the facts necessary for an order under this Act appear to the court to be sufficiently proved, the court may, either upon the hearing of the cause or of any proceedings in the cause or matter, make such order under this Act.

Power to make an order in a cause.

65. The court may order the costs and expenses of and relating to the petition, orders, directions, conveyances or transfers and assignments to be made in pursuance of this Act, or any of them, to be raised and paid out of or from the lands or personal estate, or the rents or produce thereof, in respect of which the same respectively are made, or in such manner as the court thinks proper.

Costs may be paid out of estate.

66. Upon any petition being presented under this Act to the court concerning a person of unsound mind, the court may if it thinks fit, direct that a commission in the nature of a writ "*de lunatico inquirendo*" issue concerning such person and

Commission concerning person's state of mind.

postpone the making of any order upon such petition until a return is made to such commission.

Suit may  
be directed.

**67.** Upon any petition under this Act being presented to the court, it may postpone making any order upon such petition until the right of the petitioner is declared in an action commenced for that purpose.

Power to  
give judgment in  
absence of  
a trustee.

**68.** 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 has also appeared by his attorney-at-law at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to  
relieve  
trustee from  
personal  
liability.

**69.** (1) 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 Act, 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.

(2) In this section "trustee" includes a person who has ceased to be a trustee and the personal representative of a deceased trustee.

Power  
to order  
beneficiary  
to indemnify  
for breach  
of trust.

1979-44.

**70.** (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, make such order as to the court seems just, for impounding all or any part of the estate or interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

(2) This section applies to breaches of trust committed before as well as after 1st January, 1980.

71. (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may with the consent in writing of the Chief Justice pay the same to the Accountant-General to be held by him in an account and to be dealt with by him according to the orders of the court.

Payment  
into court  
by trustees.

(2) Trustees to whom any moneys or securities shall be due or owing or secured may with the consent of the Chief Justice deposit the instrument under or by virtue of which such moneys or securities may be due or owing or secured in the office of the Registrar to be dealt with subject to the rules and in accordance with the orders of the court.

(3) The receipt of the Accountant-General or certificate of the Registrar shall be a sufficient discharge to trustees for the money or securities so paid to the Accountant-General or for the instrument deposited with the Registrar.

(4) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the others.

(5) Where any such money or securities are deposited with any banker, broker, or other depositary, 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.

(6) 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.

On petition the court may order the application of trust moneys or administration of the trust.

72. (1) Such orders as shall seem fit shall from time to time be made by the court in respect of the trust moneys, securities, or other instruments so paid in or deposited as aforesaid, or for the investment and payments of any such moneys, or of any dividends or interest on any such moneys, securities, or other instruments, and for the transfer and delivery out of any such moneys, securities, and other instruments, and for the administration of any such trusts generally upon a petition to be presented in a summary way to the court by such party or parties as to the court appear to be competent and necessary in that behalf.

(2) Service of a petition referred to in subsection (1) shall be made upon such person as the court determines and directs.

(3) Every order made upon any such petition shall have the same authority and effect, and shall be enforced and subject to rehearing and appeal in the same manner, as if the same had been made in an action regularly commenced in the court.

(4) Where it appears that any such trust moneys cannot be safely distributed without the commencement of an action, the Judge may direct such action to be commenced.

Chief Justice may make orders.

73. The Chief Justice may make such orders as from time to time shall seem necessary to give effect to the provisions of sections 71 and 72.

Trustee may apply to court for advice.

74. (1) A trustee or personal representative may without commencing an action apply by petition to the court or by summons upon a written statement to a Judge in Chambers for the opinion, advice or direction of the court or Judge in Chambers on any question respecting the management or administration of the trust property or the assets of any testator or intestate.

(2) Such application shall be served upon and the hearing be attended by all persons interested in such application or such of them as the Judge thinks expedient.

(3) The trustee or personal representative acting upon the opinion, advice or direction given by the Judge, shall be deemed so far as regards his own responsibility to have discharged his

duty as such trustee, or personal representative, in the subject matter of the said application.

(4) This Act does not extend to indemnify any trustee, or personal representative in respect of any act done in accordance with such opinion, advice or direction if he is guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice and direction.

(5) The cost of such application shall be in the discretion of the Judge.

75. Where any trustee, or personal representative, applies for the opinion, advice or direction of a Judge under section 74, the petition or statements shall be signed by an attorney-at-law, and the Judge may require the petitioner or applicant to attend him by his attorney-at-law either in chambers or in court where he deems it necessary to have the assistance of an attorney-at-law.

Petition for advice to be signed by attorney-at-law.

## PART VI

### *General Provisions*

76 (1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, apply to and include trustees for the purposes of a settlement under Part III of the *Property Act*, whether such trustees are appointed by the court or by the settlement, or under provisions contained in any enactment.

Application of Act to trustees of settled land.

Cap. 236.

(2) Where, either before or after 1st January, 1980, Act, trustees of a settlement have been appointed by the court for the purposes of the *Property Act*, then, after that date

- (a) the persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, though no trustees for the purposes of the said Act were thereby appointed; or
- (b) if there are no such persons able and willing to act, the surviving or continuing trustees for the time being for the

purposes of the Act or the personal representatives of the last surviving or continuing trustee for those purposes, shall have the powers conferred by this Act to appoint new or additional trustees of the settlement for the purposes of the said Act.

(3) Appointment of new trustees for the purposes of the said Act made or expressed to be made before 1st January, 1980 by the trustees or personal representatives referred to in subsection (2)(b) or by the persons referred to in paragraph (a) of that subsection are, without prejudice to any order of the court made before that date, hereby confirmed.

Indemnity  
to banks,  
companies  
and associa-  
tions.

**77.** Every order made or purporting to be made under this Act by the court shall be a complete indemnity to all banks, companies and associations and to all persons for any acts done pursuant thereto, and it shall not be necessary for those banks, companies and associations or for any person to inquire concerning the propriety of the order, or whether the court had jurisdiction to make it.

Application  
of Act.

**78. (1)** This Act, except where otherwise expressly provided, applies to trusts including so far as this Act applies thereto, executorships and administratorships constituted or created either before or after 1st January, 1980.

(2) The powers conferred by this Act 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 Act does not affect the legality or validity of anything done before 1st January, 1980, except as otherwise herein-before expressly provided.

(4) This Act applies to both registered and unregistered land.

**SCHEDULE**

(Section 3(1))

*Manner of Investment*

1. In securities issued by the Government of Barbados.
2. In securities the payment of interest on which is guaranteed by the 1979-44. Government of Barbados.
3. In fixed interest securities issued in Barbados by the Caribbean Development Bank, the International Bank for Reconstruction and Development or the Inter-American Development Bank, being securities registered in Barbados.
4. In debentures issued in Barbados by a company incorporated in Barbados, being debentures registered in Barbados.
5. In mortgages of freehold property in Barbados and of leasehold property of which the unexpired term at the time of investment is not less than 20 years.
6. In any securities issued in Barbados by a company incorporated in Barbados, being securities registered in Barbados, to the extent and subject to compliance with the requirements and conditions prescribed from time to time by the Minister responsible for Finance.

**THE LAWS OF BARBADOS**

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