CHAPTER 114.

An Act to facilitate the execution of trusts during the period of the present emergency.

[12th October 1939.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Power to delegate execution of trusts.

1.—(1) Notwithstanding anything in any enactment or any rule of law or equity, a trustee, personal representative, tenant for life or statutory owner may, subject to the provisions of subsection (3) of this section, delegate to any person, or to two or more persons jointly, the exercise, during the whole or any part of—

(*a*) any period during which he is engaged in war service; and

(*b*) a period of one month thereafter;

of any functions vested in him as such.

(2) Subject to the provisions of the next following subsection, a personal representative who under the last foregoing subsection delegates to any person the exercise of any functions relating to the administration of an estate may also delegate to that person the exercise of any functions which may in the future devolve on him by reason of his becoming a trustee of the estate when the administration thereof is completed.

(3) Nothing in the foregoing provisions of this section shall authorise—

(*a*) the delegation of the exercise of any functions to any person who would not as principal be competent to exercise those functions;

(*b*) the delegation of the exercise of any functions in relation to an implied or constructive trust;

(*c*) the delegation of the exercise of any functions by one of two trustees to the other, unless that other trustee is a trust corporation; or

(*d*) the delegation of the exercise of any functions by one of two or more trustees to any person (not being a trust corporation) to whom the exercise of functions has been delegated, whether by virtue of this section or otherwise, by the other trustee or, as the case may be, all the other trustees.

In this subsection references to a trustee include references to a personal representative.

(4) Any functions delegated under this section shall be delegated by power of attorney, and section two hundred and nineteen of the Supreme Court of Judicature (Consolidation) Act, 1925 (which relates to the depositing of instruments creating powers of attorney in the central office of the Supreme Court) and section one hundred and twenty-five of the Law of Property Act, 1925 (which directs the filing of powers of attorney relating to land) shall apply accordingly.

15 & 16 Geo. 5. c. 49.

15 & 16 Geo. 5. c. 20.

(5) The powers conferred by this section on trustees, personal representatives, tenants for life and statutory owners in relation to any period during which they are engaged in war service may also be exercised by any trustee, personal representative, tenant for life, or statutory owner not engaged in war service in relation to any period during which—

(*a*) he is outside the United Kingdom; and

(*b*) for any reason connected with the present war it is not reasonably practicable for him to return to the United Kingdom.

(6) The power of delegation conferred by this section shall be in addition to, and not in derogation from, any other power of delegation, whether conferred by statute or otherwise.

Liability of donor and donee of power of attorney for acts and defaults of donee.

2.—(1) In any proceedings brought against the donor of a power of attorney in respect of any act or default of the donee of the power, it shall be a defence for the donor to prove that the donee was appointed by him in good faith and without negligence.

(2) All jurisdiction and powers of any court shall apply to the donee of a power of attorney in the same manner, so far as respects the execution of the trust or the administration of the estate to which the power of attorney relates, as if the donee were acting in relation to the trust or estate in the same capacity as the donor of the power.

Supplementary provisions as to powers of attorney.

3.—(1) A power of attorney shall be attested by at least one witness, and may be made either before or after the commencement of the period during which the donor of the power is engaged in war service.

(2) In favour of any person dealing with the donee of a power of attorney, any act done or instrument executed by the donee shall, notwithstanding that the power has been revoked, whether by the act of the donor of the power or by operation of law, be as valid and effectual as if the power had remained unrevoked at the time when the act was done or the instrument executed, unless that person had at that time actual notice of the revocation of the power.

(3) A statutory declaration by the donee of a power of attorney relating to any trust or estate that the donor of the power is, or was at any specified date, engaged in war service, or that in any transaction the donee is acting in the execution of the trust or the administration of the estate, shall in favour of a person dealing with the donee of the power be conclusive evidence of that fact.

(4) In this section references to a period during which, or time at which, a person is engaged in war service shall be taken to include references to a period during which, or time at which, a person is outside the

United Kingdom and it is not reasonably practicable, for any reason connected with the present war, for him to return to the United Kingdom.

Provisions as to transfer of stock.

4.—(1) The donee of a power of attorney relating to any trust or estate may himself delegate the power to transfer any inscribed stock.

(2) The fact that it appears from any power of attorney, or from any evidence required for the purposes of any 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.

(3) The fact that in dealing with any stock the donee of a power of attorney purports to be acting in exercise of the power shall, in favour of any person in whose books the stock is inscribed or registered, be conclusive evidence that the dealing is authorised by the power, unless that person has at the time of the dealing notice that it is not so authorised.

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

Exercise of Settled Land Act powers in case of death of infant engaged on war service or prevented from returning to United Kingdom. 15 & 16 Geo. 5. c. 18.

5. Where an infant dies—

(*a*) while engaged in war service; or

(*b*) while he is outside the United Kingdom, and at a time when immediately before his death it was not reasonably practicable, for any reason connected with the present war, for him to return to the United Kingdom;

any act done or instrument executed after his death in purported exercise of the powers conferred by section twenty-six of the Settled Land Act, 1925, shall, in favour of any person who had not at the time the act was done or the instrument executed actual notice of the death, be as valid and effectual as if the infant were at that time still living.

Provisions as to notice of death of persons reported missing.

6. No person shall be deemed, for the purposes of this Act, to have actual notice of the death of any other person by reason only of a report to the effect that that other person is missing, or is missing and is believed to have been killed, unless the death of that other person has been presumed by order of a court of competent jurisdiction and the person in question has notice of the order.

Interpretation.

7. In this Act the following expressions have the meanings hereby respectively assigned to them :—

" functions " includes discretions, powers and duties;

" personal representative ", " settled land ", " settlement ", " statutory owner ", " tenant for life ", " trust corporation " and " trustee of the settlement " have the same meaning as in the Settled Land Act, 1925;

" power of attorney " means a power of attorney given under section one of this Act;

" the period of the present emergency " means the period beginning with the first day of September nineteen hundred and thirty-nine and ending with such date as His Majesty may by Order in Council declare to be the date on which the emergency which was the occasion of the passing of this Act came to an end; and

" war service " means—

(*a*) service during the period of the present emergency (whether within or outside the United Kingdom) in any of His Majesty's naval, military or air forces or the nursing service or other auxiliary service of any of those forces;

(*b*) any other service during that period (whether within or outside the United Kingdom) in any British ship;

(*c*) any other work or employment during that period outside the United Kingdom in connection with the present war.

Provision as to Northern Ireland. 10 & 11 Geo. 5. c. 67.

8. Notwithstanding anything in the Government of Ireland Act, 1920, the Parliament of Northern Ireland shall have power to make laws for purposes similar to the purposes of this Act.

Short title and extent.

9.—(1) This Act may be cited as the Execution of Trusts (Emergency Provisions) Act, 1939.

(2) This Act shall not extend to Scotland.

(3) No provision of this Act, except the provisions of the last foregoing section, shall extend to Northern Ireland.

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