5TH SCH. —*cont.*

Session and Chapter.	Short Title.	Extent of Repeal.
13 & 14 Geo. 5. c. 9.	The Agricultural Holdings Act, 1923.	Section twenty-one.
15 Geo. 5. c. 5.	The Law of Property (Amendment) Act, 1924.	Section four and the Fourth Schedule.

CHAPTER 19.

An Act to consolidate certain enactments relating to trustees in England and Wales.

[9th April 1925.]

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:—

PART I.

INVESTMENTS.

Authorised investments.

1.—(1) A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say:

(*a*) In any of the parliamentary stocks or public funds or Government securities of the United Kingdom;

(*b*) On real or heritable securities in the United Kingdom, including the security of a charge on freehold land by way of legal mortgage and a charge under section thirty-three of the Finance Act, 1896;

56 & 57 Vict c. 28.

(*c*) In the stock of the Bank of England or the Bank of Ireland;

(*d*) In India Seven, Five and a half, Four and a half, Three and a half, Three and Two and a

half per cent. stock, or in any other capital stock which may at any time be issued by the Secretary of State in Council of India under the authority of any Act of Parliament, and charged on the revenues of India, or any other securities the interest in sterling whereon is payable out of and charged on the revenues of India;

(*e*) In any securities the interest of which is for the time being guaranteed by Parliament;

(*f*) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the Receiver for the Metropolitan Police District, or in metropolitan water stock;

(*g*) In the debenture or rentcharge, or guaranteed or preference, stock of any railway company in the United Kingdom incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum on its ordinary stock;

(*h*) In the stock of any railway or canal company in the United Kingdom whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in paragraph (*g*) of this subsection, either alone or jointly with any other railway company;

(*i*) In the debenture stock of any company owning or operating a railway in India the interest in sterling on which is paid or guaranteed by the Secretary of State in Council of India;

(*j*) In the "B" annuities of the Eastern Bengal, the East Indian, the Scinde Punjaub and Delhi, Great Indian Peninsula and Madras Railways, or in any securities substituted therefor, and any like annuities which may at any time after the commencement of this Act be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the

revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of annuity Class D and annuities comprised in the register of annuitants Class C of the East Indian Railway Company;

(*k*) In the stock of any company owning or operating a railway in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed;

(*l*) In the debenture or guaranteed or preference stock of any company in the United Kingdom established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five per centum on its ordinary stock;

(*m*) In nominal or inscribed stock issued, or to be issued, under the authority of any Act of Parliament or Provisional Order, by the corporation of any municipal borough in the United Kingdom having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, or by any county council in the United Kingdom;

(*n*) In nominal or inscribed stock issued or to be issued by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having according to the returns of the last census prior to the date of investment a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners have not exceeded eighty per centum of the amount authorised by law to be levied;

(*o*) In any stocks, funds, or securities authorised under the Colonial Stock Act, 1900, or any Act extending the same, but subject to any restrictions thereby imposed; 63 & 64 Vict. c. 62.

(*p*) In any local bonds issued under the Housing (Additional Powers) Act, 1919, and mortgages of any fund or rate granted after the passing of that Act under the authority of any Act or Provisional Order by a local authority (including a county council) which is authorised to issue local bonds under that Act; 9 & 10 Geo. 5. c. 99.

(*q*) In any stock or securities issued in respect of any loan raised by the Government of Northern Ireland;

(*r*) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the court;

and may also from time to time vary any such investment.

(2) For the purposes of this section—

(*a*) the London and North Eastern Railway Company, the Southern Railway Company, the London Midland and Scottish Railway Company, and the Great Western Railway Company shall each be treated as if it were a railway company in Great Britain incorporated by a special Act of Parliament which had in each of the ten years immediately before the date of amalgamation paid a dividend at a rate of not less than three per centum on its ordinary stock, and, for the purposes of this provision the date of amalgamation means—

(i) as respects the London and North Eastern Railway Company and the Southern Railway Company the first day of January, nineteen hundred and twenty-three; and

(ii) as respects the London Midland and Scottish Railway Company and the Great Western Railway Company the first day

of July, nineteen hundred and twenty-three;

(*b*) a railway or canal company in Northern Ireland whose system is situate partly in Northern Ireland and partly in the Irish Free State shall not be deemed to be a railway or canal company in Northern Ireland.

Purchase at a premium of redeemable stocks; change of character of investment.

2.—(1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in section one of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

Provided that, in the case of any stock mentioned or referred to in paragraphs (*g*), (*i*), (*k*), (*l*), (*m*), (*o*), (*p*) and (*q*) of subsection (1) of section one of this Act, which is liable to be redeemed at par or at some other fixed rate, a trustee shall not be entitled to purchase the stock—

(*a*) at a price exceeding fifteen per centum above par or such other fixed rate; nor

(*b*) if the stock is liable to be so redeemed as aforesaid within fifteen years of the date of purchase, at a price exceeding its redemption value.

(2) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act, or any statute replaced by this Act.

Discretion of trustees.

3. Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust or by statute with respect to the investment of the trust funds.

Power to retain investment which has ceased to be authorised.

4. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

Enlargement of powers of investment.

5.—(1) A trustee having power to invest in real securities may invest and shall be deemed always to have had power to invest—

(*a*) on mortgage of property held for an unexpired term of not less than two hundred years, and

not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for non-payment of rent; and

(*b*) on any charge, or upon mortgage of any charge, made under the Improvement of Land Act, 1864. 27 & 28 Vict. c. 114.

(2) A trustee having power to invest in real securities may accept the security in the form of a charge by way of legal mortgage, and may, in exercise of the statutory power, convert an existing mortgage into a charge by way of legal mortgage.

(3) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may invest in the debenture stock of a railway company or such other company as aforesaid.

(4) A trustee having power to invest money in the debentures or debenture stock of any railway or other company may invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875. 38 & 39 Vict. c. 83.

(5) A trustee having power to invest money in securities in the Isle of Man, or in securities of the government of a colony, may invest in any securities of the Government of the Isle of Man, under the Isle of Man Loans Act, 1880. 43 & 44 Vict. c. 8.

(6) A trustee having a general power to invest trust money in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament, may invest in, or upon the security of, mortgage debentures duly issued under and in accordance with the provisions of the Mortgage Debenture Act, 1865. 28 & 29 Vict. c. 78.

Power to invest in land subject to drainage charges. 10 & 11 Vict. c. 32.

6. A trustee having power to invest in the purchase of land or on mortgage of land may invest in the purchase or on mortgage of any land notwithstanding the same is charged with a rent under the powers of the Public Money Drainage Acts, 1846 to 1856, or the Landed Property Improvement (Ireland) Act, 1847, or by an absolute order made under the Improvement of Land Act, 1864, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge.

Investment in bearer securities.

7.—(1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments:

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

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

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

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

8.—(1) A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court—

(*a*) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere; and

(*b*) that the amount of the loan does not exceed two third parts of the value of the property as stated in the report; and

(*c*) that the loan was made under the advice of the surveyor or valuer expressed in the report.

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

(3) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase, or in lending money upon the security, of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the court the title accepted be such as a person acting with prudence and caution would have accepted.

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

Liability for loss by reason of improper investment.

9.—(1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section applies to investments made before as well as after the commencement of this Act.

Powers supplementary to powers of investment.

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

(2) On a sale of land for an estate in fee simple or for a term having at least five hundred years to run by trustees or by a tenant for life or statutory owner, the trustees, or the tenant for life or statutory owner on behalf of the trustees of the settlement, 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 charge by way of legal mortgage or a mortgage by demise or subdemise for a term of at least five hundred years (less a nominal reversion when by sub-demise), of the land sold, with or

without the security of any other property, such charge or 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 to the full value thereof.

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 charge or 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 charge or mortgage; and the trustees of the settlement shall be bound to give effect to such contract made by the tenant for life or statutory owner.

(3) 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.

(4) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may as to all or any of such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to

any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith:

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

(5) 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.

(6) Where the loan referred to in subsection (1), or the sale referred to in subsection (2), of this section 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.

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

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

PART II.

GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES.

General Powers.

Power of trustees for sale to sell by auction, &c.

12.—(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) This section does not enable an express power to sell settled land to be exercised where the power is not vested in the tenant for life or statutory owner.

Power to sell subject to depreciatory conditions.

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

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

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

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

Power of trustees to give receipts.

14.—(1) The receipt in writing of a trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—

(*a*) the proceeds of sale or other capital money arising under a disposition on trust for sale of land;

15 Geo. 5. c. 18.

(*b*) capital money arising under the Settled Land Act, 1925.

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

Power to compound liabilities.

15. A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

(*a*) accept any property, 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 of payment of any debt; or

(*f*) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

Power to raise money by sale, mortgage, &c.

16.—(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.

(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 Settled Land Act, 1925, not being also the statutory owners.

Protection to purchasers and mortgagees dealing with trustees.

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

Devolution of powers or trusts.

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

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

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

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

Power to insure.

19.—(1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three fourth parts of the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

Application of insurance money where policy

20.—(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 Settled Land Act, 1925, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste, be capital money for the purposes of the trust or settlement, as the case may be. kept up under any trust, power or obligation.

(2) If any such money 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 such money—

(*a*) if it was receivable in respect of settled land within the meaning of the Settled Land Act, 1925, or any building or works thereon, shall be deemed to be capital money arising under that Act from the settled land, and shall be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly;

(*b*) if it was receivable in respect of personal chattels settled as heirlooms within the meaning of the Settled Land Act, 1925, shall be deemed to be capital money arising under that Act, and shall be applicable by the trustees, or, if in court, under the direction of the court, in like manner as provided by that Act with respect to money arising by a sale of chattels settled as heirlooms as aforesaid;

(*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) Such money, or any part thereof, may also be applied by the trustees, or, if in court, under the direction of the court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust, and, in the case of money which is deemed to be capital money arising under the Settled Land Act, 1925, be subject to the provisions of that Act with respect to the application of capital money by the trustees of the settlement.

(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 the commencement of this Act, but only to money received after such commencement.

Deposit of documents for safe custody.

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

Reversionary interests, valuations, and audit.

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

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

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

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

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

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

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

(*a*) to 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 or interest or other thing in action as aforesaid is derived, payable or charged; or

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

unless and until required in writing so to do by some person, or the guardian of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the costs of any proceedings required to be taken:

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

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

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

Power to employ agents.

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

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

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

(*a*) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody

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

(*b*) A trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the production of any such deed by the solicitor shall have the same statutory validity and effect as if the person appointing the solicitor had not been a trustee;

(*c*) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or solicitor to have the custody of and to produce the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing in this subsection 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 such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the trustee.

This subsection applies whether the money or valuable consideration or property was or is received before or after the commencement of this Act.

Power to concur with others.

24. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such

share in conjunction with the persons entitled to or having power in that behalf over the other share or shares, and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Power to delegate trusts during absence abroad.

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

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

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

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

(4) The power of attorney shall be attested by at least one witness, and shall be filed at the Central Office within ten days after the execution thereof with a statutory declaration by the donor that he intends to remain out of the United Kingdom for a period exceeding one month from the date of such declaration, or from a date therein mentioned.

(5) The execution of any such instrument and statutory declaration shall be verified in such manner as is required by statute in the case of powers of attorney filed at the Central Office.

(6) If the power of attorney confers a power to dispose of or deal with land or a charge registered under the Land Registration Act, 1925, an office copy shall be filed at the land registry.

15 Geo. 5. c. 21.

(7) The statutory declaration aforesaid and a statutory declaration by the donee of the power of

attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.

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

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

(10) 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.

(11) In this section "trustee" includes a tenant for life and a statutory owner.

Indemnities.

Protection against liability in respect of rents and covenants.

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

(*a*) any rent, covenant, or agreement reserved by or contained in any lease; or

(*b*) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rentcharge; 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, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof and thereafter—

(i) he may distribute the residuary 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;

(ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

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

(3) In this section "lease" includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; "grant" applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such

indemnity as aforesaid or varying the liabilities under the grant; "lessee" and "grantee" include persons respectively deriving title under them.

Protection by means of advertisements.

27.—(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 representatives, may give notice by advertisement in the Gazette, and in a daily London newspaper, and also, if the property includes land not situated in London in a daily or weekly newspaper circulating in the district in which the land is situated, and such other like notices, including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

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

(*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 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 in regard to notice.

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

Exoneration of trustees in respect of certain powers of attorney.

29. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability or bankrupt or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying:

Provided that—

(*a*) nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made;

(*b*) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied indemnity of trustees.

30.—(1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default.

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

Maintenance, Advancement and Protective Trusts.

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

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

(i) during the infancy of any such person, if his interest so long continues, the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or such part, if any, of the income of that property as may, in all the circumstances, be reasonable, whether or not there is—

(*a*) any other fund applicable to the same purpose; or

(*b*) any person bound by law to provide for his maintenance or education; and

(ii) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest:

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

(2) During the infancy of any such person, if his interest so long continues, the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income

thereof from time to time in authorised investments, and shall hold those accumulations as follows :—

(i) If any such person—

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

(*b*) on attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest;

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 infancy, and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

(ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, 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 infancy of such person if his interest so long continues, apply those accumulations, or any part thereof, as if they were income arising in the then current year.

(3) This section applies in the case of a contingent interest only if the limitation or trust carries the intermediate income of the property, but it applies to a future or contingent legacy by the parent of, or a person standing in loco parentis to, the legatee, if and for such period as, under the general law, the legacy carries interest for the maintenance of the legatee, and in any such case as last aforesaid the rate of interest shall (if the income

available is sufficient, and subject to any rules of court to the contrary) be five pounds per centum per annum.

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

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

Power of advancement.

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

Provided that—

(*a*) the money so paid or applied for the advancement or benefit of any person shall not exceed altogether in amount one-half of the presumptive or vested share or interest of that person in the trust property; and

(*b*) if that person is or becomes absolutely and indefeasibly entitled to a share in the trust property the money so paid or applied shall be brought into account as part of such share; and

(*c*) no such payment or application shall be made so as to prejudice any person entitled to any prior life or other interest, whether vested or contingent, in the money paid or applied

unless such person is in existence and of full age and consents in writing to such payment or application.

(2) This section applies only where the trust property consists of money or securities or of property held upon trust for sale calling in and conversion, and such money or securities, or the proceeds of such sale calling in and conversion are not by statute or in equity considered as land, or applicable as capital money for the purposes of the Settled Land Act, 1925.

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

Protective trusts.

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

(i) Upon trust for the principal beneficiary during the trust period or until he, whether before or after the termination of any prior interest, does or attempts to do or suffers any act or thing, or until any event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during that period, he would be deprived of the right to receive the same or any part thereof, in any of which cases, as well as on the termination of the trust period, whichever first happens, this trust of the said income shall fail or determine;

(ii) If the trust aforesaid fails or determines during the subsistence of the trust period, then, during the residue of that period, the said income shall be held upon trust for the application thereof for the maintenance or support, or otherwise for the benefit, of all or any one or more exclusively of the other or others of the following persons (that is to say)—

(*a*) the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any; or

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

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

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

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

PART III.

APPOINTMENT AND DISCHARGE OF TRUSTEES.

Limitation of the number of trustees.

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

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

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

(*b*) the number of the trustees shall not be increased beyond four.

(3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply—

(*a*) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or

(*b*) where the net proceeds of the sale of the land are held for like purposes; or

(*c*) to the trustees of a term of years absolute limited by a settlement on trusts for raising money, or of a like term created under the statutory remedies relating to annual sums charged on land.

Appointments of trustees of settlements and dispositions on trust for sale of land.

35.—(1) Appointments of new trustees of conveyances on trust for sale on the one hand and of the settlement of the proceeds of sale on the other hand, shall, subject to any order of the court, be effected by separate instruments, but in such manner as to secure that the same persons shall become the trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale.

(2) Where new trustees of a settlement are appointed, a memorandum of the names and addresses of the persons who are for the time being the trustees thereof for the purposes of the Settled Land Act, 1925, shall be endorsed on or annexed to the last or only principal vesting instrument by or on behalf of the trustees of the settlement, and such vesting instrument shall, for that purpose, be produced by the person having the possession thereof to the trustees of the settlement when so required.

(3) Where new trustees of a conveyance on trust for sale relating to a legal estate are appointed, a memorandum of the persons who are for the time being the trustees for sale shall be endorsed on or annexed thereto by or on behalf of the trustees of the settlement of the proceeds of sale, and the conveyance shall, for that purpose, be produced by the person having the possession thereof to the last-mentioned trustees when so required.

(4) This section applies only to settlements and dispositions of land.

Power of appointing new or additional trustees.

36.—(1) Where a trustee, either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is an infant, then, subject to the restrictions imposed by this Act on the number of trustees,—

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

(*b*) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee;

may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees in the place of the trustee so deceased remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, or being an infant, as aforesaid.

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

(3) Where a corporation being a trustee is or has been dissolved, either before or after the commencement of this Act, 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) of this section or any similar previous enactment to the personal representatives of a last surviving or

continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

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

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

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

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

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

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

(8) The provisions of this section relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

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

Supplemental provisions as to appointment of trustees.

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

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

(*b*) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be 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.

Evidence as to a vacancy in a trust.

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

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

Retirement of trustee without a new appointment.

39.—(1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this 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.

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

(*a*) if the deed contains a declaration by the appointor to the effect that any estate or

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

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

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

(*a*) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants; and for the purposes of the trust, the estate, interest, or right to which the declaration relates; and

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

(3) An express vesting declaration, whether made before or after the commencement of this Act, 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) of this section, as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) This section does not extend—

(*a*) to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures or debenture stock;

(*b*) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;

(*c*) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Act of Parliament.

In this subsection "lease" includes an underlease and an agreement for a lease or underlease.

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

(6) This section applies to deeds of appointment or discharge executed on or after the first day of January, eighteen hundred and eighty-two.

PART IV.

POWERS OF THE COURT.

Appointment of new Trustees.

Power of court to appoint new trustees.

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

In particular and without prejudice to the generality of the foregoing provision, the court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a lunatic or a defective, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

(2) The power conferred by this section may, in the case of a deed of arrangement within the meaning of the Deeds of Arrangement Act, 1914, be exercised either by the High Court or by the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed. 4 & 5 Geo. 5. c. 47.

(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 to authorise remuneration.

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

Powers of new trustee appointed by the court.

43. Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions,

and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Vesting Orders.

Vesting orders of land.

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

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

(ii) Where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—

(*a*) is under disability; or

(*b*) is out of the jurisdiction of the High Court; or

(*c*) cannot be found, or, being a corporation, has been dissolved;

(iii) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land;

(iv) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead;

(v) Where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land;

(vi) Where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land

or interest or release the right for twenty-eight days after the date of the requirement;

(vii) Where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the court to be expedient;

the court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct:

Provided that—

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

(*b*) Where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the High Court or cannot be found, or being a corporation has been dissolved, the land interest or right shall be vested in such other person who remains entitled, either alone or with any other person the court may appoint.

Orders as to contingent rights of unborn persons.

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

Vesting order in place of conveyance by infant mortgagee.

46. Where any person entitled to or possessed of any interest in land, or entitled to a contingent right in land, by way of security for money, is an infant, the

court may make an order vesting or releasing or disposing of the interest in the land or the right in like manner as in the case of a trustee under disability.

Vesting order consequential on order for sale or mortgage of land.

47. Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this 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 that court thinks fit in the purchaser or mortgagee or in any other person:

Provided that, in the case of a legal mortgage, the estate to be vested in the mortgagee shall be a term of years absolute.

Vesting order consequential on judgment for specific performance, &c.

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

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

(*b*) that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this 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.

49. 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 full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate or interest as the court directs;

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey.

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

Vesting orders as to stock and things in action.

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

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

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

(*a*) is under disability; or

(*b*) is out of the jurisdiction of the High Court; or

(*c*) cannot be found, or, being a corporation, has been dissolved; or

(*d*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled; or

(*e*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the court for that purpose has been served on him;

(iii) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead;

(iv) Where stock is standing in the name of a deceased person whose personal representative is under disability;

(v) Where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the court to be expedient;

the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the court may appoint:

Provided that—

(*a*) Where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(*b*) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the court may appoint.

(2) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make or join in making the transfer:

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

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court under this Act, may transfer the stock to himself or any other person, according to the order, and the Bank of England and all other companies shall obey every order under this section according to its tenor.

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

(5) The court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Act is to be exercised.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

Vesting orders of charity property.

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

Vesting orders in relation to infant's beneficial interests.

53. Where an infant is beneficially entitled to any property the court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order—

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

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

Jurisdiction of the High Court in regard to lunatics.

54. Where the High Court has power under this Part of this Act to make orders in relation to lunatics and defectives who are trustees, the Judge or Master in Lunacy shall, save as provided in this section, have no power to make such an order:

Provided that where—

(*a*) a lunatic or defective has become a trustee of mortgaged property merely by reason of the mortgage having been paid off;

(*b*) an order in lunacy is made authorising the exercise of a power to appoint a trustee;

(*c*) an order in lunacy is made for giving effect to a contract made before the lunatic or defective was under disability;

(*d*) a lunatic or defective is beneficially entitled to some interest in the property but holds the property or some interest therein under an express, implied or constructive trust;

the High Court and the Judge or Master in Lunacy shall, in accordance with rules to be made by the Lord Chancellor, have concurrent jurisdiction.

Orders made upon certain allegations to be conclusive evidence. 53 & 54 Vict. c. 5.

55. Where a vesting order is made as to any land under this Act or under the Lunacy Act, 1890, as amended by any subsequent enactment, or under any Act relating to lunacy in Northern Ireland, founded on an allegation of any of the following matters namely—

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

(*b*) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the High 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.

Application of vesting order to property out of England.

56. The powers of the court to make vesting orders under this Act shall extend to all property in any part of His Majesty's dominions except Scotland.

Jurisdiction to make other Orders.

Power of court to authorise dealings with trust property.

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

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

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

(4) This section does not apply to trustees of a settlement for the purposes of the Settled Land Act, 1925.

Persons entitled to apply for orders.

58.—(1) An order under this Act for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Act concerning any interest in land, stock, or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Power to give judgment in absence of a trustee.

59. Where in any action the court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to charge costs on trust estate.

60. The court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

Power to relieve trustee from personal liability.

61. 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.

Power to make beneficiary indemnify for breach of trust.

62.—(1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman restrained from anticipation, make such order as to the court seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or persons claiming through him.

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

Payment into Court.

Payment into court by trustees.

63.—(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court; and the same shall, subject to rules of court, be dealt with according to the orders of the court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

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

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

(5) Every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid, or delivered.

PART V.

GENERAL PROVISIONS.

Application of Act to Settled Land Act Trustees.

64.—(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 the Settled Land Act, 1925, and trustees for the purpose of the management of land during a minority, whether such trustees are appointed by the court or by the settlement, or under provisions contained in any instrument.

(2) Where, either before or after the commencement of this Act, trustees of a settlement have been appointed by the court for the purposes of the Settled Land Acts, 1882 to 1890, or of the Settled Land Act, 1925, then, after the commencement of this Act—

(*a*) the person or 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 Acts were thereby appointed; or

(*b*) if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being for the purposes of the said Acts, 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 Acts.

(3) Appointments of new trustees for the purposes of the said Acts made or expressed to be made before the commencement of this Act by the trustees or trustee or personal representatives referred to in paragraph (*b*) of the last preceding subsection or by the persons referred to in paragraph (*a*) of that subsection are, without prejudice to any order of the court made before such commencement, hereby confirmed.

Trust estates not affected by trustee

65. Property vested in any person on any trust or by way of mortgage shall not, in case of that person becoming a convict within the meaning of the Forfeiture

Act, 1870, vest in any such administrator as may be appointed under that Act, but shall remain in the trustee or mortgagee, or pass to his co-trustee in right of survivorship or devolve on his personal representative as if he had not become a convict: becoming a convict. 33 & 34 Vict. c. 23.

Provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

66. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to the Bank of England, and to all persons for any acts done pursuant thereto, and it shall not be necessary for the Bank or for any person to inquire concerning the propriety of the order, or whether the court by which the order was made had jurisdiction to make it. Indemnity to banks, &c.

67.—(1) In this Act "the court" means the High Court, and also the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, or the county court, where those courts respectively have jurisdiction. Jurisdiction of the "court."

(2) The procedure under this Act in palatine courts and county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.

68. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:— Definitions.

(1) "Authorised investments" mean investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law;

(2) "Contingent right" as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

(3) "Convey" and "conveyance" as applied to any person include the execution by that person of every necessary or suitable assurance (including

an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance; "sale" includes an exchange;

(4) "Gazette" means the London Gazette;

(5) "Instrument" includes Act of Parliament;

(6) "Land" includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, but not an undivided share in land; and in this definition "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof; and "hereditaments" mean real property which under an intestacy occurring before the commencement of this Act might have devolved on an heir;

(7) "Mortgage" and "mortgagee" include a charge or chargee by way of legal mortgage, and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee;

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

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

(10) "Possession" includes receipt of rents and profits or the right to receive the same, if any;

"income" includes rents and profits; and "possessed" applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land;

(11) "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;

(12) "Rights" include estates and interests;

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

(14) "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;

(15) "Tenant for life," "statutory owner," "settled land," "settlement," "trust instrument," "trustees of the settlement" "lunatic," "defective" "term of years absolute" and "vesting instrument" have the same meanings as in the Settled Land Act, 1925, and "entailed interest" has the same meaning as in the Law of Property Act, 1925; 15 Geo. 5. c. 20.

(16) "Transfer" in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee;

(17) "Trust" does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions "trust" and "trustee" extend to implied and constructive trusts, and to cases where the trustee has a

beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" where the context admits, includes a personal representative, and "new trustee" includes an additional trustee;

(18) "Trust corporation" means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee, or entitled by rules made under subsection (3) of section four of the Public Trustee Act, 1906, to act as custodian trustee;

6 Edw. 7. c. 55.

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

(20) "United Kingdom" means Great Britain and Northern Ireland.

Application of Act.

69.—(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 the commencement of this Act.

(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 the commencement of this Act, except as otherwise hereinbefore expressly provided, and except that the enactments mentioned in the First Schedule to this Act shall be deemed always to have had effect subject to the provisions set forth in that Schedule.

Enactments repealed.

70. The Acts mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that, without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889: 52 & 53 Vict. c. 63.

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

(*b*) References in any document to any enactment repealed by this Act shall be construed as references to this Act or to the corresponding enactment in this Act.

Short title, commencement, extent.

71.—(1) This Act may be cited as the Trustee Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(3) This Act, except where otherwise expressly provided, extends to England and Wales only.

(4) The provisions of this Act bind the Crown.

SCHEDULES.

FIRST SCHEDULE.

RETROSPECTIVE AMENDMENTS. Section 69.

(1) The investments mentioned in paragraphs (*d*), (*i*) and (*k*) of section one of the Trustee Act, 1893, and in the corresponding provisions of any enactment replaced by that Act, shall be deemed always to have included investments mentioned in paragraphs (*d*), (*i*) and (*k*) of subsection (1) of section one of this Act.

(2) In subsection (3) of section twelve of the Trustee Act, 1893, and in the enactment which it replaced, the expression "customary land" shall be deemed never to have included land in regard to which a tenant had power to dispose of the legal estate by deed, and the expression "land conveyed by way of mortgage" shall be deemed never to have included land conveyed in trust for securing debentures or debenture stock.

(3) Section forty-seven of the Trustee Act, 1893, shall be deemed always to have had effect as if after the words "Settled

1ST SCH. —*cont.*

"Land Acts, 1882 to 1890," there had been inserted the words "and trustees for the purposes of section forty-two of the "Conveyancing Act, 1881."

(4) Subsection (1) of section eight of the Conveyancing Act, 1911, shall be deemed always to have had effect as if at the end thereof there had been inserted the words "or other the trustees or trustee for the time being of the trust."

SECOND SCHEDULE.

Section 70.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
22 & 23 Vict. c. 35.	The Law of Property Amendment Act, 1859.	Sections twenty-three, twenty-seven, twenty-eight and twenty-nine.
44 & 45 Vict. c. 41.	The Conveyancing Act, 1881.	Subsections (4) and (5) of section forty-two.
48 & 49 Vict. c. 25.	The East India Unclaimed Stock Act, 1885.	Subsection (3) of section twenty-three.
53 Vict. c. 5. -	The Lunacy Act, 1890 -	Sections one hundred and thirty-five to one hundred and thirty-eight, so far as they relate to lunatic trustees, except where the Judge or Master in Lunacy is given concurrent jurisdiction with the High Court.
56 & 57 Vict. c. 53.	The Trustee Act, 1893 -	The whole Act.
57 Vict. c. 10 -	The Trustee Act, 1893, Amendment Act, 1894.	Sections one and four.
59 & 60 Vict. c. 35.	The Judicial Trustees Act, 1896.	Section three.
1 & 2 Geo. 5. c. 37.	The Conveyancing Act, 1911.	Section eight.
1 & 2 Geo. 5. c. 40.	The Lunacy Act, 1911 -	Section one.
4 & 5 Geo. 5. c. 47.	The Deeds of Arrangement Act, 1914.	Section eighteen.
9 & 10 Geo. 5. c. 99.	The Housing (Additional Powers) Act, 1919.	Section nine.
11 & 12 Geo. 5. c. 55.	The Railways Act, 1921 -	The words "the Trustee "Act, 1893, and" in section fifteen.

LAW OF PROPERTY ACT, 1925
(15 Geo. 5. Ch. 20).

CORRIGENDA.

Section 96, line 8 of the Section, for the word "section" read "subsection".

Section 97, line 7 of the Section, for the word "subsection" read "section".

Section 193, line 5 of the Section, insert a comma after the word "common".

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2ND SCH. —*cont.*

Session and Chapter.	Short Title.	Extent of Repeal.
12 & 13 Geo. 5. c. 16.	The Law of Property Act, 1922.	Subsection (4) of section eighty-three, section eighty-eight; Part IV., except subsection (7) of section one hundred and ten, subsection (3) of section one hundred and thirteen, and subsection (5) of section one hundred and twenty-three.
12 & 13 Geo. 5. c. 60.	The Lunacy Act, 1922 -	Subsections (3) (4) and (5) of section two.
15 Geo. 5. c. 5.	The Law of Property (Amendment) Act, 1924.	Section five and the Fifth Schedule.

CHAPTER 20.

An Act to consolidate the enactments relating to Conveyancing and the Law of Property in England and Wales. [9th April 1925.]

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 :—

PART I.

GENERAL PRINCIPLES AS TO LEGAL ESTATES, EQUITABLE INTERESTS AND POWERS.

Legal estates and equitable interests.

1.—(1) The only estates in land which are capable of subsisting or of being conveyed or created at law are—

(*a*) An estate in fee simple absolute in possession;

(*b*) A term of years absolute.

(2) The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are—

(*a*) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee