

ANNO TRICESIMO & TRICESIMO PRIMO

VICTORIÆ REGINÆ.

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CAP. XCVII.

An Act to facilitate the Administration of Trusts in *Scotland*. [12th *August* 1867.]

WHEREAS by the Acts Twenty-fourth and Twenty-fifth *Victoria*, Chapter Eighty-four, and Twenty-sixth and Twenty-seventh *Victoria*, Chapter One hundred and fifteen, certain Powers are conferred on gratuitous Trustees in *Scotland*, and it is expedient that greater Facilities should be given for the Administration of Trust Estates in *Scotland*:

Be it enacted by the Queen'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:

Definition of Trusts and Trust Deeds.

1. In the Construction of this Act and of the said recited Acts the Words "Trusts and Trust Deeds" shall be held to mean and include all Trusts constituted by virtue of any Deed or by private or local Act of Parliament; and the Words "gratuitous Trustees" in the Sense of this Act and of the said recited Acts shall mean and include all Trustees who are not entitled as such to Remuneration for their Services in addition to any Benefit they may be entitled to under the Trust, or who hold the Office *ex officio*, and shall extend to and include all Trustees, whether original or assumed, who are entitled to receive any Legacy or Annuity or

Bequest under the Trust: Provided always, that no Trustee to whom any Legacy or Bequest or Annuity is expressly given on condition of the Recipient thereof accepting the Office of Trustee under the Trust shall be entitled to resign the Office of Trustee by virtue of this or of the said recited Acts, unless otherwise expressly declared in the Trust Deed.

General Powers of Trustees.

2. In all such Trusts the Trustees shall have Power to do the following Acts, where such Acts are not at variance with the Terms or Purposes of the Trust, and such Acts when done shall be as effectual as if such Powers had been contained in the Trust Deed, viz.:

1. To appoint Factors and Law Agents, and to pay them a suitable Remuneration:
2. To discharge Trustees who have resigned, and the Representatives of Trustees who have died:
3. To grant Leases of the Heritable Estate of a Duration not exceeding Twenty-one Years for Agricultural Lands, and Thirty-one Years for Minerals, and to remove Tenants:
4. To uplift, discharge, or assign Debts due to the Trust Estate:
5. To compromise or to submit, and refer all Claims connected with the Trust Estate:
6. To grant all Deeds necessary for carrying into effect the Powers vested in the Trustees:
7. To pay Debts due by the Truster or by the Trust Estate without requiring the Creditors to constitute such Debts where the Trustees are satisfied that the Debts are proper Debts of the Trust.

Powers which may be granted to Trustees by the Court.

3. It shall be competent to the Court of Session, on the Petition of the Trustees under any Trust Deed, to grant Authority to the Trustees to do any of the following Acts, on being satisfied that the same is expedient for the Execution of the Trust and not inconsistent with the Intention thereof; and the Court shall determine all Questions of Expenses in relation to such Applications, and where it shall be of opinion that the Expense of any such Application should not be charged against the Trust Estate, it shall so find in disposing of the Application:

1. To sell the Trust Estate or any Part of it:
2. To grant Feus or Long Leases of the Heritable Estate or any Part of it:
3. To borrow Money on the Security of the Trust Estate or any Part of it:
4. To excamb any Part of the Trust Estate which is heritable:

Provided always, that when all the Beneficiaries under the Trust in existence at the Date of presenting such Petition are of full Age

Age and capable of acting, it shall be in their Power, by Deed of Consent, to grant Authority to the Trustees to do any of the said Acts, the same not being inconsistent with the Intention of the Trust; and such Authority being obtained, the said Acts, when done, shall be equally valid and effectual as if the Authority of the Court for the Execution of the same had previously been obtained.

Extension of Powers of Trustees for Sale.

4. All Powers of Sale conferred on Trustees by the Trust Deed, or by virtue of this Act, may be exercised either by public Roup or private Bargain, unless otherwise directed in the Trust Deed or in the Authority given by the Court, or in the Deed of Consent to be granted by the Beneficiaries; and when the Estate is heritable, it shall be lawful in such Sales to sell, subject to or under Reservation of a Feu Duty or Ground Annual, at such Rate and on such Conditions as may be agreed upon; and in all Sales and Feus it shall be lawful to reserve the Mines and Minerals if so wished.

Powers of Trustees under Trust Deeds with respect to Investments.

5. Trustees under any Trust Deed may, unless the contrary be expressly provided in such Trust Deed, invest the Trust Funds in the Purchase of any of the Government Stocks, Public Funds, or Securities of the United Kingdom, or Stock of the Bank of *England*, or may lend the Trust Funds on the Security of any of the aforesaid Stocks or Funds or on the Security of Heritable Property in *Scotland*, and may from Time to Time at their Discretion vary any such Investment or Loan: Provided, that the Trustees shall not be held to be subject as Defendants or Respondents to the Jurisdiction of any of Her Majesty's Superior Courts of Law or Equity in *England* or *Ireland*, either as Trustees or personally, by reason of their having invested or lent Trust Funds as aforesaid.

Powers of Investment in Trust Deeds not to be restricted.

6. The Powers of Investment conferred by this Act shall not be held or construed as restricting or controlling any Powers of Investment of Trust Funds expressly contained in any Trust Deed.

The Court may authorize the Advance of Part of the Capital of a Trust Fund.

7. The Court may from Time to Time, under such Conditions as they see fit, authorize Trustees to advance any Part of the Capital of a Fund destined, either absolutely or contingently, to Minor Descendants of the Truster, being Beneficiaries having a vested Interest in such Fund, if it shall appear that the Income of the Fund is insufficient or not applicable to, and that such Advance is necessary for, the Maintenance or Education of such Beneficiaries, or any of them, and that it is not expressly prohibited by the Trust Deed, and that the Rights of Parties other than

than the Heirs or Representatives of such Minor Beneficiaries shall not be thereby prejudiced.

Application of Trust Funds.

8. The Court may, on Petition by the Trustees, and after such Intimation and Inquiry as may be thought necessary, authorize the Trustees under any Trust Deed to apply the whole or any Part of Trust Funds which they are empowered or directed by the Trust Deed to invest in the Purchase of Heritable Property to the Payment or Redemption of any Debt or Burden affecting Heritable Property which may be destined to the same Series of Heirs, and subject to the same Conditions as are by the Trust Deed made applicable to the Heritable Property directed to be purchased; provided always, that such Application shall not be inconsistent with the other Provisions of the Trust Deeds.

Discharge of Trustees resigning and Heirs of Trustees dying during the Subsistence of the Trust.

9. When a Trustee who resigns, or the Representatives of a Trustee who has died or resigned, cannot obtain a Discharge of his Acts and Intromissions from the remaining Trustees, and when the Beneficiaries of the Trust refuse, or are unable, from Absence, Incapacity, or otherwise, to grant a Discharge, the Court may, on Petition to that Effect, at the Instance of such Trustee or Representative, and after such Intimation and Inquiry as may be thought necessary, grant such Discharge, and it shall be in the Power of the Court to direct that the Expense of such Application be paid out of the Trust Estate, if the Court shall consider this reasonable.

Form of Resignation of Trustees.

10. Any Trustee entitled to resign his Office may do so by Minute of the Trust entered in the Sederunt Book of the Trust, and signed in such Sederunt Book by such Trustee and by the other Trustee or Trustees acting at the Time, or he may do so by signing a Minute of Resignation in the Form of the Schedule (A.) to this Act annexed, or to the like Effect, and may register the same in the Books of Council and Session, and in such Case he shall be bound to intimate the same to his Co-Trustee or Trustees, and the Resignation shall be held to take effect from and after the Expiry of One Calendar Month after the Date of such Intimation, or the last Date thereof if more than One, if the Trustee or Trustees to whom such Intimation was given is within *Scotland*, or otherwise within Three Months from and after that Date; and in case after Inquiry the Residence of any Trustee to whom Intimation should be given under this Provision cannot be found, such Intimation shall be given edictally in usual Form, and the Resignation in that Case shall be held to take effect from and after the Expiry of Six Months: and if any Trustee entitled to resign his Office is at the Time sole Trustee,

Trustee, he shall not be entitled to resign until, with the Consent of the Beneficiaries under the Trust of full Age and capable of acting at the Time, he shall have assumed new Trustees, who shall have declared their Acceptance of Office, or he may apply to the Court stating his Wish to resign, and praying for the Appointment of new Trustees or of a Judicial Factor to administer the Trust, and the Court after Intimation to the Beneficiaries under the Trust, or such of them as the Court may direct, shall thereafter either appoint a Judicial Factor, or on the Application of the Beneficiaries or any of them, may appoint Trustees in the same Manner as is provided under the Twelfth Section of this Act; and after such Appointment either of Judicial Factor or of Trustees the petitioning Trustee will be entitled to resign; and any retiring Trustee or Trustees who may have already retired shall be bound, when required, and at the Expense of the Trust, to execute all Deeds necessary for divesting them of Trust Property, conveying the same to the Trustees or Trustee or Judicial Factor acting in the Execution of the Trust.

Appointment of new or additional Trustees by Deed of Assumption.

11. When Trustees have the Power of assuming new Trustees, such new Trustees may be assumed by a Deed of Assumption executed by the Trustee or Trustees acting under such Trust Deed, or by a Quorum of such Trustees, if more than Two, in the Form of the Schedule (B.) to this Act annexed, or to the like Effect; and a Deed of Assumption so executed, in addition to a general Conveyance of the Trust Estate, may contain a special Conveyance of Heritable Property, and in such Case may, with the necessary Warrant of Registration thereon, be recorded in the Register of Sasines, and when so recorded shall be effectual as a Conveyance of the Heritable Property belonging to the Trust Estate, so far as specially conveyed, in favour of the existing Trustees and the Trustees so to be assumed; and such Deed of Assumption shall also be effectual as an Assignation in favour of such existing and assumed Trustees of the whole Personal Property belonging to the Trust Estate; and in the event of any Trustee acting under any Trust Deed being insane, or incapable of acting by reason of physical or mental Disability, or by continuous Absence from the United Kingdom for a Period of Six Calendar Months or upwards, such Deed of Assumption may be executed by the remaining Trustee or Trustees acting under such Trust Deed: provided that when the Signatures of a Quorum of Trustees cannot be obtained it shall be necessary to obtain the Consent of the Court to such Deed of Assumption on Application either by the Acting Trustee or Trustees, or by any One or more of the Beneficiaries under the Trust Deed.

12. When

Appointment of new Trustees by the Court.

12. When Trustees cannot be assumed under any Trust Deed, or when any Person who is the sole Trustee acting under any such Trust Deed has become insane, or incapable of acting by reason of physical or mental Disability, the Court may, upon the Application of any Party having Interest in the Trust Estate, after such Intimation and Inquiry as may be thought necessary, appoint a Trustee or Trustees under such Trust Deed, with all the Powers incident to that Office; and on such Appointment being made, in the Case of any Person becoming insane or incapable of acting as aforesaid, such Person shall cease to be a Trustee under such Trust Deed; and the Court may on such Application grant a Warrant to complete a Title to any Heritable Property forming Part of the Trust Estate in favour of the Trustee or Trustees so appointed, which Warrant shall specify and describe the Heritable Property to which it is applicable, and shall also specify the Moveable or Personal Property, or bear Reference to an Inventory appended to the Petition to the Court in which such Moveable or Personal Property is specified; and such Warrant shall be effectual as a Conveyance of such Heritable Property in favour of the Trustee or Trustees so appointed, in like Manner and to the same Effect as a Warrant in favour of a Judicial Factor granted under the Authority of the Thirty-eighth Section of "The Titles to Land (*Scotland*) Act, 1860," and shall also be effectual as an Assignation of such Moveable or Personal Property in favour of the Trustee or Trustees so appointed.

Powers of Trustees appointed by the Court.

13. Trustees appointed by the Court shall not have the Power of assuming new Trustees, unless such Power is expressly conferred upon them by the Court.

Completion of Title by the Beneficiary of a lapsed Trust.

14. When any Person shall be entitled to the Possession for his own absolute Use of any Heritable Property or Moveable or Personal Property the Title to which has been taken in the Name of any Trustee, or Curator bonis, or Factor *loco absentis*, or Factor *loco tutoris*, or Judicial Factor, or other Person who has died or become incapable of acting without having executed a Conveyance of such Property, it shall be lawful for the Person beneficially entitled to such Property to apply by Petition to the Court for Authority to complete a Title to such Property in his own Name, and such Petition shall specify and describe the Heritable Property, and refer to an Inventory in which the Moveable or Personal Property is specified, to which such Title is to be completed, and after such Intimation and Inquiry as may be thought necessary it shall be lawful for the Court to grant a Warrant for completing such Title as aforesaid, which Warrant shall specify and describe the Heritable Property to which it is applicable,

applicable, and shall also specify the Moveable or Personal Property, or shall bear reference to an Inventory appended to the Petition in which such Personal Property is specified; and such Warrant shall be effectual as a Conveyance of such Heritable Property in favour of the Petitioner in like Manner and to the same Effect as a Warrant in favour of a Judicial Factor granted under the Authority of the Thirty-eighth Section of "The Titles to Land (*Scotland*) Act, 1860," and shall also be effectual as an Assignation of such Moveable or Personal Property in favour of the Petitioner.

Completion of Title of Judicial Factors.

15. Application for Authority to complete the Title of a Judicial Factor to any Trust Property or Estate under the Thirty-eighth Section of "The Titles to Land (*Scotland*) Act, 1860," may be contained in the Petition for the Appointment of such Factor, and such Application may include Moveable or Personal Property; and the Warrant to be granted in pursuance thereof shall, in so far as regards Heritable Property, be effectual as a Conveyance in manner specified in the said Act and in the preceding Section of this Act.

Powers of the Court under this Act to be exercised by the Lord Ordinary.

16. Applications to the Court under the Authority of this Act shall be by Petition addressed to the Court, and shall be brought in the first instance before One of the Lords Ordinary officiating in the Outer House, who may direct such Intimation and Service thereof and such Investigation or Inquiry as he may think fit, and the Power of the Lord Ordinary before whom the Petition is enrolled may be exercised by the Lord Ordinary on the Bills during Vacation, and all such Petitions shall as respects Procedure, Disposal, and Review be subject to the same Rules and Regulations as are enacted with respect to Petitions coming before the Junior Lord Ordinary in virtue of the Act Twentieth and Twenty-first *Victoria*, Chapter Fifty-six: Provided that when in the Exercise of the Powers pertaining to the Court of appointing Trustees and regulating Trusts it shall be necessary to settle a Scheme for the Administration of any charitable or other permanent Endowment, the Lord Ordinary shall after preparing such Schemes report to one of the Divisions of the Court, by whom the same shall be finally adjusted and settled; and in all Cases where it shall be necessary to settle any such Scheme, Intimation shall be made to Her Majesty's Advocate, who shall be entitled to appear and intervene for the Interests of the Charity or any Object of the Trust or the public Interest.

Court may pass Acts of Sederunt.

17. The Court shall be and is hereby empowered from Time to Time from and after the passing of this Act to make such Regulations by Act or Acts of Sederunt as may be requisite for carrying into

into effect the Purposes of this Act: Provided that within Fourteen Days from the Commencement of every future Session of Parliament there shall be laid before both Houses of Parliament Copies of all Acts of Sederunt made and passed under the Powers of this Act.

Resignation of Trustee who is also Executor to infer Resignation as Executor.

18. In all Cases where a Trust Deed appoints the Trustees to be also Executors, the Resignation of any such Trustee shall infer, unless where otherwise expressly declared, his Resignation also as an Executor under such Trust Deed.

Reservation of Powers in Trust Deeds and Questions under depending Actions, and Powers, &c. given by this Act, may be negatived by express Declaration.

19. Nothing in this Act contained shall be construed as innovating, revoking, or restricting any express Powers or Directions given to Trustees acting under any Trust Deed, or shall affect the Decision of any Question which may at the passing of this Act be the Subject of a depending Action; and none of the Powers and Incidents by this Act conferred or annexed to the Office of Trustee shall take effect or be exercised if it is declared in the Trust Deeds that they shall not take effect; and when there is no such Declaration, then if any Variations or Limitations of any of the Powers or Incidents by the Act conferred or annexed are contained in such Trust Deed, such Powers or Incidents shall take effect or be exercised only subject to such Variations or Limitations.

Short Title.

20. This Act may be cited for all Purposes as "The Trusts (*Scotland*) Act, 1867."

SCHEDULES.

SCHEDULE (A.)

FORM OF MINUTE OF RESIGNATION.

I *A.B.* do hereby resign as and from the Date hereof the Office of Trustee under the Trust Disposition and Settlement (*or other Deed*) granted by *C.D.* in favour of *E.F.*, *G.H.*, and myself, dated the Day of , and recorded in the Books of Council and Session (*or other Register*) the Day of . [*If the Trustee was assumed add,* and to which Office of Trustee I was assumed by Deed of Assumption granted by the said *E.F.* and *G.H.*, dated the Day of .] In witness whereof [*Testing Clause in the usual Form*].

SCHEDULE (B.)

FORM OF DEED OF ASSUMPTION.

I *A.B.* [*or* we *A.B.* and *C.D.*], the accepting and surviving [*or* remaining] Trustee [*or* Trustees, *or* a Majority and Quorum of the accepting and surviving Trustees], acting under a Trust Disposition and Deed of Settlement (*or other Deed*) granted by *E.F.* in favour of , dated the Day of [*if recorded, specify Register and Date of recording*], do hereby assume *G.H.* [*or G.H.* and *I.K.*] as a Trustee [*or* Trustees] under the said Trust Disposition and Settlement (*or other Deed*); and I [*or* we] dispone and convey to myself [*or* ourselves] and the said *G.H.* [*or G.H.* and *I.K.*] as Trustees under the said Trust Disposition and Settlement (*or other Deed*), and the Survivors or Survivor, and the Heirs of the last Survivor, the Majority, while more than Two are acting, being a Quorum, all and sundry the whole Trust Estate and Effects, Heritable and Moveable, Real and Personal, of every Description, or wherever situated, at present belonging to or under my (*or* our) Control as Trustees (*or* surviving Trustees, *or otherwise, as the Case may be,*) under the said Trust Disposition and Settlement, together with the whole Vouchers, Titles, and Instructions thereof. (*Then may follow, if wished, special Conveyances of Heritable or Personal Property with the usual*

Clauses of a Conveyance applicable to such Property, and as the Case may require.) And we consent to Registration hereof for Preservation, and also in the General or Particular [*or* Burgh] Register of Sasines for Publication. In witness whereof [*Testing Clause in the usual Form*].

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