



Law of Property Act 1922

1922 CHAPTER 16

PART IV

AMENDMENTS OF THE TRUSTEE ACTS.

109 As to the number of trustees of a settlement or holding land on trust for sale, and notice of their appointment.

- (1) Where, at the commencement of this Act, there are more than four trustees of a settlement, 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—
 - (a) The number of trustees thereof shall not, where the settlement or disposition is made or comes into operation after the commencement of this Act, 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, after the settlement or disposition is made, be increased beyond four;
 - (c) Appointments of new trustees of a vesting instrument on the one hand and of the trust deed or settlement on the other hand, and 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 vesting instrument or conveyance on trust for sale as become the trustees of the settlement relating thereto;
 - (d) Where new trustees of a vesting instrument (relating to the legal estate in settled land) 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 Acts shall be endorsed on or annexed thereto by or on

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behalf of the trustees -of the settlement, and the vesting instrument shall, for that purpose, be produced by the person having the possession thereof to the trustees of the settlement when so required;

- (e) 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 such trustees when so required.
- (3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees shall not apply to land vested in trustees for charitable, ecclesiastical, or public purposes, or where the net proceeds are held for like purposes; nor 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 section forty-four-of the Conveyancing Act, 1881.

110 Provisions relating to appointments of new trustees.

- (1) 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 High Court or otherwise, then and in any such case the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or 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 (save as provided by the instrument, if any, creating the trust, or by any statutory enactment to the contrary) it shall not be obligatory to appoint any additional trustee, nor shall the number of trustees be increased beyond four by virtue of any such appointment.
- (2) Where a trustee has been removed under a power contained in the instrument creating the trust, then 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 the Trustee Act, 1893, 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 after or before the commencement of this Act, then for the purposes of section ten of the Trustee Act, 1893, the corporation shall, from the date of the dissolution, become and be deemed to have been 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 section ten of the Trustee Act, 1893 (or by the enactment which it replaced), to the personal representatives of A last surviving or continuing trustee shall be, and shall be deemed to have always 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 shall have, and be deemed always to have had, power, at anytime before renouncing probate, to exercise the power of appointment

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- given by section ten aforesaid (or by the enactment which it replaced), if willing to act for that purpose and without thereby accepting the office of, executor.
- (6) The provisions of subsections (3), (5), and (6) of section ten of the Trustee Act, 1893. shall apply to this section as if those provisions were re-enacted in this section.
- (7) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Act (in this subsection called " the deceased ") to a legacy, or to the residue of the estate of the deceased, or any share thereof, and such legacy, residue, or share is not, under the will (if any) of the deceased, devised or bequeathed to trustees for the infant, the personal representative or representatives of the deceased may appoint a trust corporation or two or more individuals not- exceeding four (whether or not including the personal representative or representatives or one or more of the personal representatives) to be the trustee or trustees of such legacy, residue, or share for the infant, and to be trustees of any land being or forming part of such residue or share for the purposes of the Settled Land Acts, and of section forty-two of the Conveyancing Act, 1881, and may execute or do any assurance or thing requisite for vesting such legacy, residue, or share in the trustee or trustees so appointed, and thereupon the personal representative or representatives, as such, shall be discharged from all further liability in respect of such legacy, residue, or share, and the same may be retained in its existing condition or state of investment or may be converted into money, and such money may be invested in any authorised investment. And where a personal representative has, before the commencement of this Act. retained such legacy, residue, or share, and invested the same in any investments authorised for the investment of trust money, he shall not (subject to any order of the court made before such commencement) be deemed to have incurred any liability on that account or by reason of not having paid or transferred the money or property into court.
- (8) In subsection (1) of section twenty-five of the Trustee Act, 1893, the words " or, being a corporation, is in liquidation or has been dissolved " are hereby inserted after the word " bankrupt. "
- (9) For the words " at least two trustees to perform the trust" in paragraph (c) of subsection (2) of section ten of the Trustee Act, 1893, the words " either a trust corporation or at least two individuals to act as trustees to perform the trust" are hereby substituted.
- (10) For the words " where there are more than two trustees if one of them " in subsection (1) of section eleven of the Trustee Act, 1893, the words " where after " the execution of the deed of discharge there will be " either a trust corporation or at least two individuals to " act as trustees to perform the trust, if any other " trustee " are hereby substituted.
- (11) After the words " incapable of acting therein " in subsection (1) of section ten of the Trustee Act, 1893, the words " or is an infant " are hereby inserted ; and after the words " being incapable " in the same subsection, the words " or an infant " are hereby inserted.
- (12) Where the High 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.

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111 Evidence as to a vacancy in a trust.

- (1) A statement, contained in any instrument 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, 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 thereon, shall be valid.

112 Vesting declarations.

- (1) For removing doubts, it is hereby declared that a vesting declaration made either after or before 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 requirements of section twelve of the Trustee Act, 1893, or of the enactment which it replaced, are or were 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 that section (as the case may require) such estates interests and rights as are or were capable of being and ought to be or to have been vested in those persons.
- (2) Every deed executed after the commencement of this Act by which a new trustee is appointed to perform any trust, or by which a retiring trustee is discharged under the Trustee Act, 1893, shall, if and when sufficiently stamped for that purpose, and subject to any express provision to the contrary contained in the deed, operate, without any express vesting declaration, as if it had contained a declaration made pursuant to the provisions of subsections (1) or (2) of section twelve aforesaid (as the case may require) relating to, such estates interests and rights as, according to the circumstances of the case, were capable of being vested under that section.
- (3) In subsection (3) of section twelve aforesaid and in the enactment which it replaced the expression " customary land" shall not be deemed ever to have included land, in regard to which the tenant had power to dispose of the legal estate by deed, and the expression " land conveyed by way of mortgage " shall not include, or be deemed ever to have included, land conveyed on trust for securing debentures or debenture stock.
- (4) After the commencement of this Act, section twelve of the Trustee Act, 1893, and subsection (2) of this section shall not extend 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 such declaration as mentioned in section twelve aforesaid, or the deed mentioned in subsection (2) of this section, the requisite licence or consent has been obtained or by virtue of any statute or rule of law, the vesting declaration would not operate as a breach of covenant or give rise to a forfeiture. In this subsection " lease" includes an underlease and an agreement for a lease or underlease.

113 Vesting orders.

- (1) In clause (i) of section twenty-six of the Trustee Act, 1893, and in clause (i) of subsection (1) of section thirty-five of the same Act, after the words " Where the High Court appoints or has appointed a new trustee " the following Words are hereby

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inserted in both places, namely, " or where a new trustee has been appointed, out of court, under any statutory or express power " ; and the words " by the court " in the proviso (a) at the end of subsection (1) of section thirty-five aforesaid are hereby repealed.

- (2) In clause (ii) (c) of section twenty-six aforesaid and in clause (ii) (c) of subsection (1) of section thirty-five aforesaid after the words " cannot be found, " the following words are hereby inserted in both places, namely, " or being a corporation has been dissolved " :

Provided that nothing in this subsection shall prejudicially affect any order made before the commencement of this Act.

- (3) Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the High Court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate.

114 Vesting orders in relation to infant's beneficial interests.

Where an infant is beneficially entitled to any property the High 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 appointing a person to convey such property, or, in the case of stock, or a chose 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 chose in action upon such terms as the High Court shall think fit.

115 Alimentary trusts.

- (1) Where any income (including an annuity or other periodical income payment) is directed to be held on alimentary 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, which 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, support, or otherwise for the benefit of all or any one or more exclusively of the other or others of the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue, if any, as the trustees in their absolute discretion, without being liable to account for the exercise of such discretion, think fit, or if there shall be no wife, husband, or issue of the principal beneficiary in existence, then, for the maintenance, support, or otherwise for

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the benefit of all or any one or more exclusively of the other or others of the principal beneficiary and the persons who would, if he were actually dead, be entitled to the trust property or the income thereof or of 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 as aforesaid, think fit.

- (2) This section only applies to trusts coming into operation after the commencement of this Act, and shall have effect subject to any variation of the implied trusts aforesaid contained in the instrument creating the trust.
- (3) Nothing in this section shall operate to validate any trust which, if contained in the instrument creating the trust, would be liable to be set aside.

116 Amendment of section 47 of the Trustee Act, 1893.

- (1) Section forty-seven of the Trustee Act, 1893, shall have effect, and shall be deemed always to have had effect, as if the words " and trustees for the purposes of section forty-two of the Conveyancing Act, 1881," had been inserted therein after the words " Settled Land Acts, 1882 to 1890. "
- (2) Section forty-seven aforesaid shall apply to vesting instruments as well as to settlements.

117 Protection to personal representatives and trustees in respect of rents, covenants, &c, after conveyance.

- (1) In sections twenty-seven and twenty-eight of the Law of Property Amendment Act, 1859, after the words " to a purchaser thereof " the words " or to a legatee, devisee or other person entitled to call for a conveyance thereof," and after the words " to distribute the residuary " the words " real and " are hereby respectively inserted in each of those sections.
- (2) In sections twenty-seven and twenty-eight aforesaid the expressions " assignment" and " conveyance " include an assent by a personal representative operating to vest the property in any person, and in section twenty-seven aforesaid " lease " includes an underlease.
- (3) Sections twenty-seven and twenty-eight aforesaid (as so amended) shall apply to conveyances executed by trustees after the commencement of this Act, and to the distribution of the trust property in like manner as those sections apply to conveyances by personal representatives and to the distribution of the property of the deceased, but without prejudice to the right of the lessor or grantor and the persons respectively deriving title under him to follow the trust property into the hands of the persons amongst whom the same may have been distributed.

118 Protection to trustees by means of advertisements.

- (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, may give notice by advertisements in the Gazette, and in a daily London newspaper and (but only in the case of land not situated in the county of 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) as would, in any special case, have been requisite in order to comply with section twenty-nine of the

Law of Property Amendment Act, 1859, in the case of an intended distribution of assets by a personal representative, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send particulars of his claim in respect of the property or any part thereof, to which the notice relates, to the trustees, 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.

- (2) At the expiration of the time fixed by the notice the trustees may convey or distribute the property or any part thereof, to which the notice related, to or among the persons entitled thereto, having regard only to the claims (formal or otherwise) of which the trustees then had notice and (if the requisite notice has been given) shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees shall not have had notice at the time of conveyance or distribution; but nothing in this section shall prejudice the right of any person to follow the property, or any property representing the same, into the hands of any person (other than a purchaser) who may have received the same.

119 Powers of trustees supplementary to powers of investment.

- (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 shall be no breach of any covenant by the borrower contained in the mortgage security 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 of full age or statutory owner, the trustees, or the tenant for life or statutory owner on behalf of the trustees of the settlement, may 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 for a term of not less than five hundred years, of the land sold, with or without the security of any other property such charge or mortgage to contain covenants by the mortgagor to pay the principal money secured and the interest thereon, and also to keep all buildings (if any) comprised therein insured against loss or damage by fire to the full value thereof; and 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 of full age or statutory owner.
- (3) Where any securities of a company are subject to a trust, and the trustees can lawfully hold or retain the same, they may concur in any scheme or arrangement for the reconstruction of such company, or for the sale of all or any part of the property and undertaking of such company to, or for its amalgamation with, any other company, or for the release modification or variation of any rights, privileges, or liabilities attached to such 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 hold and retain any securities so accepted as aforesaid in like manner as they could

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have done if the same had been authorised by the instrument (if any) creating the trust or by law for the investment of money subject to the trust.

- (4) If any preferential right to subscribe for any securities in any company shall be offered to trustees in respect of any previous 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) of this section or the sale referred to in subsection (2) of this section is made under the order of the High Court, the powers conferred by those subsections respectively shall apply only if and as far as the court shall by order direct.
- (7) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.
- (8) This section applies to trusts constituted or created either before or after the commencement of this Act.

120 Various powers of trustees.

- (1) Trustees may, pending the negotiation and preparation of any security, 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 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 it is to undertake 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.
- (3) Trustees may apply capital money subject to a trust in payment of the calls on any shares' subject to the same trust.
- (4) Where trust property consists of or includes any share or interest in property or the proceeds of the sale of property not vested in the trustees, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable—
 - (a) may agree or ascertain the amount or value thereof or any part thereof in such manner as they shall think fit;
 - (b) may accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they shall think fit, any securities authorised by the instrument (if any) creating the trust or by law for the investment of money subject to the trust;
 - (c) may allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable; and

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- (d) may 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 for any loss occasioned by any act or thing so done by them in good faith.
- (5) The trustees shall not be under any obligation 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 is derived, payable or charged, or 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 shall be made to their satisfaction for payment of the costs of any proceedings required to be taken, but may if they think fit refer the said matters to some such person or guardian as aforesaid, and the trustees shall not be chargeable with breach of trust by reason only of any omission in any of the matters aforesaid, except when required and upon due provision made as aforesaid, but 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.
- (6) 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.
- (7) 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 it reasonable) cause the accounts of the trust property to be audited by an independent accountant, and shall, for that purpose, produce vouchers, and give such information to him, as he shall require; and the costs of such audit (including the fee of the auditor) shall be paid out of the capital; or income of the trust property, or partly in one way and partly in the other, as the trustees shall, in their absolute/discretion, think fit, but, in default of any direction (in any special ease) by the trustees to the contrary, costs attributable to capital shall be borne by capital and those attributable to income by income.
- (8) 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 security into a charge by way of legal mortgage.
- (9) 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 otherwise.
- (10) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.
- (11) This section applies to trusts constituted or created either before or after the commencement of this Act.

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121 Power of advancement.

- (1) Where under a trust a person is 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, the trustees may from time to time pay or apply any capital money subject to the trust, not exceeding altogether in amount one-half of the value of such property or share, for the advancement or benefit of such person in such manner as the trustees shall in their absolute discretion think fit:

Provided that—

- (a) If such 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
 - (b) 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, without the consent in writing of such person.
- (2) This section applies only where the trust property consists of money or securities or 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 Acts.
 - (3) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.
 - (4) This section applies only to trusts constituted or created after the commencement of this Act.

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

- (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.
- (2) This section does not apply to trustees of a settlement within the meaning of the Settled Land Acts.

123 Power for the High Court to authorise dealings with trust property.

- (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, shall in the opinion of the High Court be 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.

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- (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 within the meaning of the Settled Land Acts.
- (5) Where any chattels belong to persons a undivided shares, the persons interested in a moiety or upwards may apply to the High Court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the Court may make such order and give any consequential directions as it thinks fit.

124 Provision for protection of purchasers and mortgagees.

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.

125 Power to employ agents, and to concur with others.

- (1) Trustees, executors, or administrators may, instead of acting personally, employ and pay an agent, whether being a solicitor, banker, stockbroker, or any 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, executors, or administrators may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting assurances, of, or managing, or cultivating, or otherwise administering any property, real or personal, 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) 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 executors or administrators 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 such trustee, executor or administrator may be entitled to or interested in any such other share, either in his own right or in a fiduciary capacity.

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- (4) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust and shall have effect subject to the terms of that instrument and to the provisions therein contained.
- (5) This section applies to trusts executorships and administrator ships constituted or created either before or after the commencement of this Act.

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

- (1) Money receivable by trustees or any beneficiary under a policy of assurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Settled Land Acts, 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.
- (2) If such money is receivable by any person, other than the trustees of the trust or settlement, such person shall recover and receive the same, and pay the net residue of such money, after discharging any costs of recovering and receiving the same, to the trustees of the trust or settlement, or, if there shall be no trustees capable of giving a discharge for the same, into the High Court.
- (3)
 - (a) If such money was receivable in respect of settled land within the meaning of the Settled Land Acts, or any building or works thereon, the same shall be deemed to be capital money arising under those Acts 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 such money was receivable, in respect of personal chattels settled as mentioned in section thirty-seven of the Settled Land Act, 1882 (as amended), the same shall be deemed to be capital money arising under the Settled Land Acts, and shall be applicable by the trustees or (if in court) under the direction of the Court in like manner as provided by subsection (2) of section thirty-seven aforesaid with respect to money arising by a sale of such chattels under that section.
 - (c) If such money was receivable in respect of property held upon trust for sale, the same 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 such money shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.
 - (e) 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 Acts, subject to the provisions of those Acts with respect to the application of capital money by the trustees of the settlement.
- (4) Nothing contained in this section shall prejudice or affect the right of any person to require such money or any part thereof to be applied in rebuilding, reinstating, or

Status: This is the original version (as it was originally enacted).

repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

- (5) This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust or settlement, and shall have effect subject to the terms of that instrument and to any provisions therein contained.
- (6) This section applies to a trust or settlement and to policies created or effected either before or after the commencement of this Act, but only to money received after the commencement of this Act.

127 Construction.

This Part of this Act shall be construed with the Trustee Act, 1893, and the Trustee Act, 1893, Amendment Act, 1894, and may be cited with those Acts as the Trustee Acts, 1893 to 1922, but without prejudice to the general definitions contained in Part XI. of this Act, which, where applicable, shall apply to those Acts.