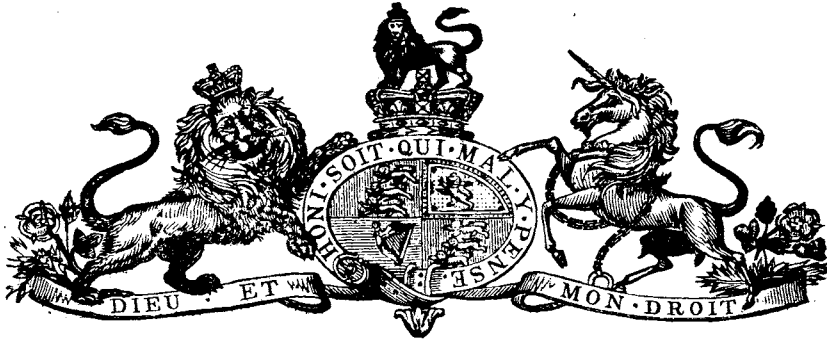


T A S M A N I A.



1889.

ANNO QUINQUAGESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 14.

Repealed 62 Vic No 34

AN ACT to amend the Law relating to the Duties, Powers, and Liability of Trustees. A.D. 1889.
[28 October, 1889.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:— [51 & 52 Vict. Chap. 59.]

1—(1.) This Act may be cited as “The Trustee Act, 1889.” Short title, extent, and definition.

(2.) For the purposes of this Act the expression “trustee” shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee.

(3.) The provisions of this Act relating to a trustee shall apply as well to several joint trustees as to a sole trustee.

2—(1.) It shall be lawful for a trustee to appoint a solicitor to be his agent to receive and give a discharge for any money or any valuable consideration or property receivable by such trustee under the trust by permitting such solicitor to have the custody of, and to produce, a deed containing any such receipt as is referred to in the Sixtieth section of “The Conveyancing and Law of Property Act, 1884;” and no trustee shall be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such deed by such solicitor shall have the same validity and effect, by virtue of the said Sixtieth section, as the same would have had if the person appointing such solicitor had not been a Receipt of money by solicitor as agent.

Trustees.

A.D. 1889.

47 Vict. No. 19.

trustee: Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this Act had not passed in case he permits such money, valuable consideration, or property to remain in the hands or under the control of the solicitor appointed as aforesaid for a period longer than is reasonably necessary to enable such solicitor to pay or transfer the same to the trustee.

(2.) It shall be lawful for a trustee to appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to such trustee under or by virtue of a policy of assurance by permitting such banker or solicitor to have the custody of and to produce such policy of assurance with a receipt signed by such trustee, and no trustee shall be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment: Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this Act had not passed, in case he permits such money to remain in the hands or under the control of the banker or solicitor appointed as aforesaid for a period longer than is reasonably necessary to enable such banker or solicitor to pay the same to the trustee.

(3.) This section shall apply only where the money or valuable consideration or property is to be received after the passing of this Act.

Depreciatory
conditions on sales
by trustees.

3—(1.) No sale made by a trustee shall be impeached by any cestuique trust upon the ground that any of the conditions, subject to which the sale was made, may have been unnecessarily depreciatory, unless it shall also appear 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 shall appear that such purchaser was acting in collusion with such trustee at the time when the contract for such 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 the ground aforesaid.

(4.) This section shall apply only to sales made after the passing of this Act.

Loans by trustees.

4—(1.) No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of such property at the time when the loan was made, provided that it shall appear to the Court that in making such loan the trustee was acting upon a report as to the value of the property made by two persons whom the trustee reasonably believed to be competent valuers instructed and employed independently of any owner of the property, whether such competent valuers resided in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in such report, and that the loan was made under the advice of such competent valuers expressed in such report. And this section shall apply to a loan upon any property of any tenure, whether agricultural or house or other property, on which the trustee can lawfully lend.

(2.) No trustee shall be chargeable with breach of trust only upon the ground that, in effecting the purchase of any property, or in lending

Trustees.

money upon the security of any property, he shall have 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.

A.D. 1889.

(3.) This section shall apply to transfers of existing securities as well as to new securities, and to investments made as well before as after the passing of this Act, except where some action or other proceeding shall be pending with reference thereto at the passing of this Act.

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

Liability for loss by reason of improper investments.

(2.) This section shall apply to investments made as well before as after the passing of this Act, except where some action or other proceeding shall be pending with reference thereto at the passing of this Act.

6—(1.) Where a trustee shall have committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it shall think fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use, whether with or without a restraint upon anticipation, make such order as to the Court shall seem 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 person claiming through him.

Indemnity for breach of trust.

(2.) This section shall apply to breaches of trust committed as well before as after the passing of this Act, except where an action or other proceeding shall be pending with reference thereto at the passing of this Act.

7—(1.) It shall be lawful for, but not obligatory upon, a trustee to 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 equal fourth parts of the full value of such building or property, and to 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.

Trustee may insure buildings.

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

8—(1.) In any suit or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply :—

Statute of limitations may be pleaded by trustees.

(a.) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they

Trustees.

A.D. 1889.

would have been enjoyed in such suit or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him.

(b.) If the suit or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such suit or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.

(2.) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such suit or other proceeding and this section had been pleaded.

(3.) This section shall apply only to suits or other proceedings commenced after the first day of *January* One thousand eight hundred and ninety-one, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute of limitations.

Investments on mortgage of long terms.

9 A power to invest trust money in real securities shall authorise and shall be deemed to have always authorised an investment upon mortgage of property held for an unexpired term of not less than Two hundred years and not subject to any reservation of rent greater than One Shilling a year, or to any right of redemption, or to any condition for re-entry except for nonpayment of rent.

Trustees of renewable leaseholds may renew.

10 It shall be lawful for any trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract or by custom or usual practice, if he shall in his discretion think fit, and it shall be the duty of such trustee, if thereunto required by any person having any beneficial interest, present or future or contingent, in such leaseholds, to use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose it shall be lawful for any such trustee from time to time to make or concur in making such surrender of the lease for the time being subsisting, and to do all such other acts as shall be requisite in that behalf; but this section is not to apply to any case where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew the lease or to contribute to the expense of renewing the same, unless the consent in writing of such person is obtained to such renewal on the part of the trustee.

Power to trustee to raise money to meet fines on renewal of lease.

11 In case any money shall be required for the purpose of paying for the renewal of any lease as aforesaid, it shall be lawful for the trustee effecting such renewal to pay the same out of any money which may then be in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if

Trustees.

he shall not have in his hands as aforesaid sufficient money for the purpose, it shall be lawful for the trustee to raise the money required by mortgage of the hereditaments to be contained in the renewed lease, or of any other hereditaments for the time being subject to the subsisting uses or trusts to which the hereditaments comprised in the renewed lease shall be subject; and no mortgagee advancing money upon such mortgage, purporting to be made under this power, shall be bound to see that such money is wanted, or that no more is raised than is wanted for the purpose aforesaid.

A.D. 1889.

12 Any Company authorised by Law to act as a Trustee may be appointed and may lawfully act as the sole trustee of any deed, will, document, or trust, notwithstanding that such deed, will, document, or trust provides for or directs the appointment of Two or more Trustees.

Trustee Company may act as sole Trustee.

This Section shall not apply to any deed, will, document, or trust by which it is provided that such Company shall not be appointed a Trustee.

This Section extends to all deeds, wills, documents, or trusts, whether made or created before or after the passing of this Act, and to all appointments of any such Company as a Trustee made before or after the passing of this Act.

13—(1.) This Act shall apply as well to trusts created by instrument executed before as to trusts created after the passing of this Act.

Application of Act.

(2.) Provided always, that save as in this Act expressly provided, nothing therein contained shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument or instruments creating the trust.

