

*Right Hon. R. J. Seddon.*

TRUSTEE AMENDMENT.

ANALYSIS.

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A BILL INTITULED

AN ACT to amend "The Trustee Act, 1883."

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Trustee Amendment Act, 1901." Short Title.

2. (1.) Where a trustee is dead, or remains out of the colony for the space of 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 so acting, then the 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 surviving or continuing trustees for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person to be a trustee in the place of such first-mentioned trustee. Power of appointing new trustees.

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

(a.) The number of trustees may be increased; and

(b.) A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part, and whether or not new trustees are or are 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 one separate trustee may be so appointed for the first-mentioned part; and

(c.) It shall not be obligatory 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, a trustee shall not be discharged under this section from his trust unless at least two trustees remain to perform the trust ; and

(d.) Any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees shall be executed or done.

(3.) Every new trustee so appointed shall have the same powers, authorities, and discretions, and may act in all respects, as if he had been originally appointed a trustee by the instrument (if any) creating the trust.

(4.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will who dies 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.

(5.) This section applies—

(a.) 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

(b.) To trusts created either before or after the commencement of this Act.

Retirement of trustee.

3. (1.) Where there are more than two trustees, if one of them 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 of the trust property in the co-trustees alone, then 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 and done.

(3.) This section applies—

(a.) 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

(b.) To trusts created either before or after the commencement of this Act.

Vesting of trust property in new or continuing trustees.

4. (1.) Where a deed by which a new trustee is appointed to perform any trust 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 and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is mentioned in the last preceding subsection by the retiring and continuing trustees, and by the other person (if any) empowered to appoint trustees, that declaration 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.

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

(4.) This section does not apply—

(a.) To land conveyed by way of mortgage for securing money subject to the trust, or to any share, stock, annuity, or property transferable only in books kept by a company or other body, or in manner directed by or under any Act; nor

(b.) To land under "The Land Transfer Act, 1885"; nor

(c.) To deeds executed before the commencement of this Act.

5. (1.) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument (if any) creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

Powers of two or more trustees.

(2.) This section applies only to trusts created by instruments coming into operation after the commencement of this Act.

#### *New clause.*

5A. (1.) Where any property is held by trustees in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may at their sole discretion pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property or any part thereof, whether there is any other fund applicable to the same purpose or any person bound by law to provide for the infant's maintenance or education or not.

Application by trustees of income of property of infant for maintenance. "Conveyancing and Law of Property Act, 1881" (44 & 45 Vict., c. 41), section 43.

(2.) 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 on securities on which they are by the instrument, if any, under which the interest of the infant arises or by law authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise, but so that the trustees may at any time, if they think fit, apply those accumulations or any part thereof as if the same were income arising in the then current year.

(3.) This section applies only if and so far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section shall not apply to trusts created before the commencement of this Act.

Repeal.

6. The provisions of this Act are in substitution ~~of~~ *for* those contained in sections seventy-nine and eighty of "The Trustee Act, 1883," and sections three and four of "The Trustee Act, 1883 Amendment Act, 1891," and those sections are hereby accordingly repealed.

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