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TRUSTEE AMENDMENT BILL.

EXPLANATORY MEMORANDUM.

CLAUSE 2: The object of this clause is to bring into conformity with the law of England the law of New Zealand relating to the powers of composition possessed by trustees. Subclauses (1) to (4) are in the same terms as section 21 of the Trustee Act, 1893 (Imperial). Subclause (5) repeals section 17 of the Administration Act, 1908 (which defines the existing limited powers of composition possessed by administrators); it also repeals section 42 of the Finance Act, 1922 (which was a temporary provision enabling trustees to grant a limited measure of relief to purchasers of trust property, and expired on 31st December, 1923).

Clause 3: This clause enables trustees to invest trust moneys in any savings-bank established under the Savings-bank Act, 1908. It also repeals subsections (1) to (4) of section 46 of the Finance Act, 1920, which authorized the investment of trust funds with "approved institutions."

Clause 4: This clause does not alter the law but removes to the Trustee Act the substance of an amendment originally made in the Finance Act, 1920.

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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

*Legislative Council,
14th August, 1924.*

[AS AMENDED BY THE HOUSE OF REPRESENTATIVES.]

House of Representatives, 20th October, 1924.

Hon. Sir Francis Bell.

TRUSTEE AMENDMENT.

ANALYSIS.

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| <p>Title.</p> <p>1. Short Title.</p> <p>2. Power for executors and trustees to compound, &c. Repeals.</p> | <p>3. Repeal. Saving of existing investments.</p> <p>4. Trustees may deposit moneys in savings-banks.</p> <p>5. Maintenance of children out of trust estate. Consequential repeal.</p> |
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A BILL INTITULED

AN ACT to amend the Trustee Act, 1908.

Title.

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

1. This Act may be cited as the Trustee Amendment Act, 1924, and shall be read together with and deemed part of the Trustee Act, 1908 (hereinafter referred to as the principal Act).

Short Title.

2. (1.) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

Power for executors and trustees to compound, &c.

(2.) An executor or administrator, or two or more trustees acting together, or a sole acting trustee where by the instrument (if any) creating the trust a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may 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.

Of. 56 & 57 Vict., c. 53, sec. 21.

(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 to executorships, administratorships, and trusts constituted or created either before or after the commencement of this Act.

Repeals.

(5.) Section seventeen of the Administration Act, 1908, and section forty-two of the Finance Act, 1922, are hereby repealed.

Repeal.

3. Section forty-six of the Finance Act, 1920, is hereby repealed :

Saving of existing investments.

Provided that where moneys have been heretofore deposited by any trustees with any institution approved as provided by the said section and remain so deposited at the passing of this Act, the deposits of such moneys shall be deemed to continue to be investments authorized by section ninety-five of the principal Act, and contracts for such deposits may be from time to time renewed at the expiration of the contracts of deposit with the approved institution with which they are now deposited, notwithstanding the repeal of the said section forty-six.

Trustees may deposit moneys in savings-banks.

4. Section ninety-five of the principal Act, as amended by section forty-six of the Finance Act, 1920, is hereby further amended as follows :—

(a.) By adding to paragraph (d) of subsection one the words “ or in any savings-bank constituted under the Savings-banks Act, 1908 ” ; and

(b.) By repealing paragraph (e) of the same subsection.

New.

Authorizing investment of trust funds in debentures of Road Boards, Town Boards, and Electric-power Boards.

4A. Section ninety-five of the principal Act is hereby further amended by inserting, after the words “ River Board ” in paragraph (c) of subsection one, the words “ or Road Board, or Town Board, or Electric-power Board.”

Maintenance of children out of trust estate.

5. (1.) Where the estate of a person deceased leaving a widow and surviving children or only surviving children does not exceed three hundred pounds in value after providing for all liabilities, it shall be lawful for the trustee of such estate to apply from time to time a reasonable portion thereof towards the maintenance and support of such widow and children, and towards the education of such children during their respective minorities.

Consequential repeal.

(2.) This section is in substitution for section ninety-two of the principal Act as amended by subsection five of section forty-six of the Finance Act, 1920, and the said section ninety-two is hereby repealed accordingly.

New.

Advisory trustees may be appointed to assist private trustees.

6. (1.) In the administration of any trust property, any trustee may act with an advisory trustee or advisory trustees to the extent hereinafter provided.

(2.) An advisory trustee or advisory trustees may be appointed—

(a.) By the testator, settlor, or other creator of the trust, in the instrument creating the trust ; or

(b.) By order of the Court made on the application of any beneficiary or of any person on whose application the Court would have power to appoint a new trustee ; or

(c.) By any person having power to appoint a new trustee.

(3.) Where a trustee acts with advisory trustees the trust property shall be vested in the first-mentioned trustee (hereinafter in this section referred to as the responsible trustee), who shall have

the sole management and administration of the estate and its trusts as fully and effectually as if he were the sole trustee :

Provided that—

- 5 (a.) The responsible trustee may consult the advisory trustees on any matter relating to the trusts or the estate :
- (b.) The advisory trustees may advise the responsible trustee on any matter relating to the trusts or the estate :
- 10 (c.) Where any advice or direction is tendered or given by the advisory trustees, the responsible trustee may follow the same and act thereon, and shall not be liable for anything done or omitted by him by reason of his following such advice or direction :
- 15 (d.) In any case where the responsible trustee is of opinion that such advice or direction conflicts with the trusts or any rule of law, or exposes him to any liability, or is otherwise objectionable, he may submit the matter in a summary manner to a Judge of the Supreme Court in Chambers, whose decision therein shall be final and shall bind the responsible trustee and the advisory trustees, and the Judge may make such order as to costs as he thinks
- 20 proper :
- (e.) Where the advisory trustees are not unanimous and tender to the responsible trustee conflicting advice or directions, the responsible trustee may apply to the Court for advice
- 25 and directions.
- (4.) No person dealing with the responsible trustee in relation to any trust property shall be concerned to inquire as to the concurrence or otherwise of the advisory trustees, or be affected by notice of the fact that the advisory trustees have not concurred.