

TRUSTEE AMENDMENT BILL.

EXPLANATORY MEMORANDUM.

By section 46 of the Finance Act, 1931 (No. 2), temporary authority was conferred on trustees, subject to the approval of the Supreme Court, to borrow on the security of the trust property and to apply the moneys so borrowed for the benefit of persons for whose benefit the trustees could lawfully apply capital moneys of the trust, if such were available. In England (by virtue of section 16 of the Trustee Act, 1925), trustees have permanent authority to borrow in such cases, and the exercise of their borrowing-powers is not restricted to the same extent as in New Zealand.

The purpose of the present Bill is merely to remove the restriction contained in subsection (4) of the section above referred to (which prohibited the exercise after the 31st March, 1933, of the borrowing-powers conferred by the section), and could have been effected simply by the repeal of that subsection. But it was thought advisable to take the opportunity of transferring to the law relating specifically to trusts and trustees (to which they properly belong) the provisions now contained in sections 45 and 46 of the Finance Act already referred to.

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

House of Representatives,

13th December, 1933.

Right Hon. Mr. Coates.

TRUSTEE AMENDMENT.

Title.	ANALYSIS.
1. Short Title.	
2. Trustee not liable for continuing to hold investment which has ceased to be an authorized investment. Repeal.	4. Powers of trustees in relation to company securities or shares held by them. Repeal.
3. Authority of trustees to borrow moneys for benefit of persons entitled to capital of trust property. Repeal.	5. Protection of trustee who pays trust-moneys to bankrupt in good faith and without knowledge of the bankruptcy.

A BILL INTITLED

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

5 of the same, as follows:—

1. This Act may be cited as the Trustee Amendment Act, 1933, and shall be read together with and deemed part of the Trustee Act, 1908.
Short Title.
See Reprint of Statutes, Vol. VIII, p. 873
2. (1) A trustee shall not be liable for breach of trust by reason only of his continuing to hold or of his having continued to hold at any time before the passing of this Act an investment which, after the same became vested in him or in any prior trustee holding under the same trust, has ceased to be an investment authorized by the trust instrument or by the general law.
Trustee not liable for continuing to hold investment which has ceased to be an authorized investment.
Repeal.
See Reprint of Statutes, Vol. VIII, p. 920
- 10 (2) This section is in substitution for section forty-five of the Finance Act, 1931 (No. 2), and that section is hereby repealed accordingly.
Authority of trustees to borrow moneys for benefit of persons entitled to capital of trust property.
3. (1) This section applies to any case where trustees under any trust created before or after the passing of this Act are authorized either by the trust instrument or by the general law, and whether at their own discretion or with the consent of any other person, or on obtaining
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the authority of the Court or any Judge thereof, to apply any capital money subject to the trust for the advancement, or benefit, or maintenance (either separately or as one of a class) of any person 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, and whether or 10 not the interest of the person for whose advancement or benefit or maintenance such moneys are to be applied is liable to be defeated by the exercise of a power of appointment or revocation, or to be diminished by the increase of the class to which he belongs : 15

Provided that this section shall apply to any such case as aforesaid only if and in so far as a contrary intention is not expressed in the instrument or instruments creating the trust or in the instrument or instruments under which the interest of the person so entitled as aforesaid arises. 20

(2) In any case to which this section applies, if no such moneys or insufficient moneys are available for application by the trustees as aforesaid, the trustees, with the consent in writing of any person whose consent is required to such an application of capital moneys, 25 and with the consent of the Court, the giving or refusing of which shall be in the absolute discretion of the Court, and subject to such terms and conditions as the Court thinks fit to impose, may borrow moneys on the security of a mortgage of any land or other assets forming part of 30 the trust property, and apply any moneys so borrowed for the advancement, or benefit, or maintenance of any person so entitled as aforesaid, and the trustees may from time to time borrow moneys for the purpose of repaying any moneys borrowed as aforesaid or borrowed for the 35 purpose of repaying such moneys.

(3) All sums paid as interest on any moneys so borrowed shall, unless the Court otherwise directs, be brought into account as part of the share of the person so entitled as aforesaid in like manner as the capital moneys advanced. 40

(4) This section is in substitution for section forty-six of the Finance Act, 1931 (No. 2), and that section is hereby repealed accordingly.

- 4.** (1) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement—
- (a) For the reconstruction of the company; or
 - 5 (b) For the sale of all or any part of the property and undertaking of the company to another company; or
 - (c) For the amalgamation of the company with another company; or
 - 10 (d) For the release, modification, or variation of any rights, privileges, or liabilities attached¹ to the 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 15 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 20 retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.
- (2) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in 25 respect of any 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 30 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.
- (3) 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.
- 40 (4) In this section the term "securities" includes stocks, funds, and shares.
- (5) Section twenty-one of the Public Trust Office Amendment Act, 1913, is hereby amended by repealing paragraph (t) thereof.

Powers of trustees in relation to company securities or shares held by them.

Cf. 15 Geo. V, c. 19, ss. 10 (3), (4), (5), 68 (13) (Imperial)

Repeal.
See Reprint of Statutes,
Vol. VIII, p. 940

Protection of trustee who pays trust-moneys to bankrupt in good faith and without knowledge of the bankruptcy.

5. (1) If any trustee in good faith, without negligence, and without actual knowledge of the bankruptcy of any person pays or transfers to or to the order of that person any trust-moneys or trust-property which he would have been entitled to receive (whether as a beneficiary or otherwise) if he had not been adjudged bankrupt, the trustee shall not be liable to the assignee in bankruptcy of the estate of the bankrupt for any moneys so paid or any property so transferred:

Provided that nothing in this section shall prejudice 10 the right of the assignee in bankruptcy to follow such moneys or property or any part thereof into the hands of the persons who have received the same respectively.

(2) For the purposes of this section a trustee shall not be deemed to have actual knowledge of the bankruptcy of 15 any person by reason merely of the fact that notice of the adjudication has been published in any newspaper or in the *Gazette*.

(3) For the purposes of this section the term "trustee" includes a committee or person authorized to 20 administer the estate of a mentally defective person under the Mental Defectives Act, 1911, the administrator or interim curator of an estate appointed under Part III of the Prisons Act, 1908, or under the Reformatory Institutions Act, 1909, and the manager of a protected 25 estate appointed under the Aged and Infirm Persons Protection Act, 1912, and the expressions "trust-moneys" and "trust-property" shall be deemed to include the moneys or other property belonging to any such estate 30 as aforesaid.

(4) This section shall apply with respect to payments of money or transfers of property made by trustees before the passing of this Act, as well as to such payments and transfers made after the passing of this Act, but shall not entitle any trustee to recover from the 35 assignee in bankruptcy of any person any moneys or property paid or transferred by the trustee to the assignee in bankruptcy before the passing of this Act.

See Reprint of Statutes,
Vol. V, p. 743,
Vol. VI, p. 984,
Vol. VIII, p. 3,
Vol. II, p. 887