

Trusts Act, 1882

THE TRUSTS ACT, 1882

ACT No. II of 1882

[13th January, 1882],

An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows :

CHAPTER I PRELIMINARY

1. This Act may be called the 2 * Trusts Act, 1882: and it shall come into force on the first day of March, 1882.

It extends to the whole of Pakistan. But nothing herein contained affects the rules of Muhammadan law as to waqf, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second Chapter of this Act applies to trusts created before the said day.

2. The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends.

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject matter of the trust is called "trust property" or "trust money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust property; and the instrument, if any, by which the trust is declared is called the "instrument of trust": a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust": and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, 1872, section 229; and all expressions used herein and defined in the Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

CHAPTER II OF THE CREATION OF TRUSTS

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or

(b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation. In this section the expression "law" includes, where the trust property is immoveable and situate in a foreign country, the law of such country.

Illustrations

- (a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.
- (b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.
- (c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. No trust in relation to immoveable property is valid unless declared by a non testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

Illustrations

- (a) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of C". This creates a trust so far as regards A and C.
- (b) A bequeaths certain property to B, "hoping he will continue it in the family". This does not create a trust, as the beneficiary is not indicated with reasonable certainty.
- (c) A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.
- (d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust property is not indicated with sufficient certainty.
- (e) A bequeaths a shop and stock in trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

7. A trust may be created

(a) by every person competent to contract, and,
[See s. 11 of the Contract Act, 1872 (9 of 1872).]

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor; but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust property.

8. The subject matter of a trust must be property transferable to the beneficiary.

It must not be merely beneficial interest under a subsisting trust.

9. Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

10. Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one is bound to accept a trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust property from vesting in him.

A disclaimer by one of two or more co trustees vests the trust property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations

(a) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III OF THE DUTIES AND LIABILITIES OF TRUSTEES

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation. Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations

(a) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(b) A, a trustee of certain land for X, Y and Z, is authorized to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust property; to obtain, where necessary, a transfer of the trust property to himself; and (subject to the provisions of the instrument of trust) to get in trust moneys invested on insufficient or hazardous security.

Illustrations

(a) The trust property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust property is money in the hands of one of two co trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust property, may be reasonably requisite for the preservation of the trust property and the assertion or protection of the title thereto.

Illustration

The trust property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877, the trustee's duty is to cause the instrument to be registered. [See now the Registration Act, 1908 (16 of 1908).]

14. The trustee must not for himself or another set up or aid any title to the trust property adverse to the interest of the beneficiary.

15. A trustee is bound to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust property.

Illustrations

(a) A, living in Chittagong, is a trustee for B, living in Karachi. A remits trust funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Karachi. The bills are dishonoured. A is not bound to make good the loss.

[Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch., for "Calcutta" (with effect from the 14th October, 1955).] [Subs. *ibid.*, for "Bombay" (with effect from the 14th October, 1955).]

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d) A, a trustee directed to sell the trust property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust property, but from want of due diligence on his part fails to receive part of the purchase money. A is bound to make good the loss thereby caused to B.

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by this co-trustee, C. C misapplies the trust property. A is personally answerable for the loss resulting to B.

16. Where the trust is created for the benefit of several persons in succession, and the trust property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will

to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Chittagong and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust property.

20. Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:

(a) in promissory notes, debentures, stock or other securities of any Provincial Government or of the Central Government, or of the United Kingdom of Great Britain and Ireland;

[Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government;

(b) in bonds, debentures and annuities charged or secured before the 15th August, 1947 by the Parliament of the United Kingdom on the revenues of India or of the Governor General in Council or of any Province:

"Provided that, after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;

(bb) in India three and a half per cent. stock, India three percent. stock, India two and a half per cent. stock or any other capital stock which was at any time issued by the Secretary of State for India in Council under the authority of an Act of Parliament of the United Kingdom and charged on the revenues of India or which was issued by the Secretary of State on behalf of the Governor General in Council under the provisions of Part XIII of the Government of India Act, 1935;

(c) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Central Government or in debentures of the Bombay Provincial Co operative Bank, Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council or the

Provincial Government of Bombay:

Provided that after the 31st day of March, 1949 no trustee shall invest the money in debentures of the Bombay Provincial Co operative Bank, Limited;

(d) in debentures or other securities for money issued, under the authority of any Central Act or Act of a Legislature established in a Province by or on behalf of any municipal body, port trust or city improvement trust in any Presidency town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;

Provided that after the 31st day of March, 1949 no trustee shall invest the money in any securities issued by or on behalf of a municipal body, port trust or city improvement trust in any Presidency town, or in Rangoon Town;

(e) on a first mortgage of immoveable property situate in a Province: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one third, or, if consisting of buildings, exceeds by one half, the mortgage money; or

(f) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e), and (f) shall be made without his consent in writing.

[20A. (1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (c) and (d) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.]

21. Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871 or, in case the trust money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Illustration

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust property or the beneficiary has thereby sustained, unless the beneficiary has by fraud

induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:

(a) where he has actually received interest:

(b) where the breach consists in unreasonable delay in paying trust money to the beneficiary:

(c) where the trustee ought to have received interest, but has not done so:

(d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) where the breach consists in failure to invest trust money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half yearly rests) at the same rate.

(f) where the breach consists in the employment of trust property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half yearly rests) at the same rate, or for the net profits made by such employment.

Illustrations

(a) A trustee improperly leaves trust property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.

(c) A trustee is guilty of unreasonable delay in investing trust money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) The duty of the trustee is to invest trust money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust money when the investment should have been made, and the intermediate dividends and interest thereon.

(e) The instrument of trust directs the trustee to invest trust money either in any such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g) Trust property is invested in one of the securities mentioned in section 20, clause (a), (b), (c) or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h) The trust property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set off against his liability a gain which has accrued to another portion of the trust property through another and distinct breach of trust

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co trustee:

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable

(a) where he has delivered trust property to his co trustee without seeing to its proper application:

(b) where he allows his co trustee to receive trust property and fails to make due enquiry as to the co trustee's dealings therewith or allows him to retain it longer than the circumstances of the case reasonably require:

(c) where he becomes aware of a breach of trust committed or intended by his co trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

A co trustee who joins in signing a receipt for trust property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co trustee.

Illustration

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase money is lost. C may be compelled to make good the amount.

27. Where co trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute. Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication [to the Government], the trustee is bound to hold the trust property to the extent of such interest for the benefit of such person in such manner as [the Provincial Government] may direct in this behalf.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall

be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER IV OF THE RIGHTS AND POWERS of TRUSTEES

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust property.

32. Every trustee may reimburse himself, or pay or discharge out of the trust property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust property, or the protection or support of the beneficiary. If he pays such expenses out of his own pocket, he has a first charge upon the trust property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust property without previous payment of such expenses and interest.

If the trust property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has by mistake made an over payment to the beneficiary, he may reimburse the trust property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such overpayment

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount. Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust property, and for the protection or support of a beneficiary who is not competent to contract.

[The` second paragraph of this section was rep. by the Amending Act. 1891 (12 of 1891), s. 2

and Sch. I.]

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust property for a term exceeding twenty one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

37. Where the trustee is empowered to sell any trust property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Where a trustee is directed to sell trust property or to invest trust money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations

(a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

40. A trustee may, at his discretion, call in any trust property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

42. Any trustees or trustee may give a receipt in writing for any money, securities or other

moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

43. Two or more trustees acting together may, if and as they think fit,

(a) accept any composition or any security for any debt or for any property claimed;

(b) allow any time for payment of any debt;

(c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,

(d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not (it expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

44. When an authority to deal with the trust property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V OF THE DISABILITIES OF TRUSTEES

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust

47. A trustee cannot delegate his office or any of his duties either to a co trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation. The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust property to D and E upon the trusts of A's will.

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good

faith, such power may be controlled by a principal Civil Court of original jurisdiction.

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator or person holding a certificate of administration.

51. A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.

52. No trustee whose duty it is to sell trust property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

54. A trustee or co trustee whose duty it is to invest trust money on mortgage or personal security must not invest it on mortgage by, or on the personal security of, himself or one of his co trustees.

CHAPTER VI OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust property.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest; and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust property, require the trustees to transfer it immediately to him.

(b) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust property, the accounts of the trust property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law

for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

59. Where no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I. The following are not proper persons within the meaning of this section :

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II. When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of I[Pakistan] or is declared an insolvent, or compounds with his creditors, or suffers a co trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

[Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation" which had been subs. by A. O., 1949, Arts. 3 (2) and 4, for "British India".]

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Where a trustee has wrongfully bought trust property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his

hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the net profits of the property, (b) be charged with an occupation rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

63. Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust property and the money or other property which he has received there for can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as merely as may be the same as his rights in respect of the original trust property.

Illustrations

(a) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust money so misemployed.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee.

A judgment creditor of the trustee attaching and purchasing trust property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a bona fide holder to whom they have passed in circulation, or shall be deemed to affect the Contract Act, 1872, section 108, or the liability of a person to whom a debt or charge is transferred.

65. Where a trustee wrongfully sells or otherwise transfers trust property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

66. Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

67. If a partner, being a trustee, wrongfully employs trust property in the business, or on the account of the partnership, no other partner is liable there for in his personal capacity to the

beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

68. Where one of several beneficiaries

(a) joins in committing breach of trust, or

(b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(d) has deceived the trustee and thereby induced him to commit a breach of trust, the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII OF VACATING THE OFFICE OF TRUSTEE

70. The office of a trustee is vacated by his death or by his discharge from his office.

71. The trustee may be discharged from his office only as follows;

(a) by the extinction of the trust;

(b) by the completion of his duties under the trust;

(c) by such means as may be prescribed by the instrument of trust;

(d) by appointment under this Act of a new trustee in his place;

(e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(f) by the Court to which a petition for his discharge is presented under this Act.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from Pakistan, or leaves Pakistan for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of

original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by
[Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for "the Provinces and the Capital of the Federation", which had been subs. by A. O., 1949, Arts. 3(2) and 4, for "British India".]

(a) the person nominated for that purpose by the instrument of trust (if any), or
(b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying 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 power.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

76. On the death or discharge of one of several co trustees, the trust survives and the trust property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII OF THE EXTINCTION OF TRUSTS

77. A trust is extinguished

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

78. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only

- (a) where all the beneficiaries are competent to contract by their consent;
- (b) where the trust has been declared by a non testamentary instrument or by word of mouth in exercise of a power of revocation expressly reserved to the author of the trust; or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors at the pleasure of the author of the trust.

Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust

CHAPTER IX OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

80. An obligation in the nature of a trust is created in the following cases.

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure', section 317, or Act No. XI of 18592 (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), section 36.

[See now the Code of Civil Procedure, 1908 (Act 5 of 1908)][The Bengal Land Revenue Sales Act, 1859.]

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust property, the trustee, in the absence of a direction to the contrary, must hold the trust property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations

(a) A conveys certain land to B

" upon trust," and no trust is declared; or
" upon trust to be thereafter declared," and no such declaration is ever made; or upon trusts that are too vague to be executed; or upon trusts that become incapable of taking effect; or " in trusts for C," and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(b) A transfers Rs. 10,000 in the four percents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety land the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(b) A, a trustee, uses the trust property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(d) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(e) A, a partner, employed on behalf of himself and his co partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(f) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

90. Where a tenant for life, co owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations

(a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A, one of its members, pays nazrana to Government and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co creditors, he must hold for the benefit of such creditors the advantage so gained.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest

therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it; or with any one through whom such person claims, he may; without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

96. Nothing contained in this Chapter shall impair the right, of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

Schedule I

Year and Chapter.

Short title.

Extent of Repeal.

29 Car. II, C.3

The Statute of Frauds.

Sections 7,8,9,10 and 11

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year

Short title.

Extent of repeal.

XXVIII of 1866

I of 1877

The trustees` and Mortgages` Powers Act 1866
The Specific Relief Act, 1877

Sections 2,3,4,5,32,33,34,35,36 and 37. In sections (The figures 39 were Rep. By the Amending Act, 1891(12 of 1891) S.2 and Sch.I) and 43 the word `trustee` wherever it occurs; and in section 43 the words `management` or and `the trust-property or`.
In section 12 the first illustration.