1927

**c 150 Trustee Act**

Ontario
CHAPTER 150.

The Trustee Act.

INTERPRETATION.

1. In this Act,—

"Assign." "Assign" shall mean and include the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate; and "assignment" shall have a corresponding meaning;

"Assign.,ment." "Contingent right." "Contingent right" as applied to land shall mean and include a contingent and executory interest, and a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility is or is not ascertained; also a right of entry whether immediate or future, vested or contingent;

"Convey." "Convey" applied to any person, shall mean and include the execution and delivery by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance; and "conveyance" shall have a corresponding meaning;

"Conveyance." "Deviser." "Deviser" shall include the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description;

"Devisee." "Device." "Device" shall include a deed, a will and a written document and an Act of this Legislature, but not a judgment or order of a court;

"Instrument." "Instrument" shall include a deed, a will and a written document and an Act of this Legislature, but not a judgment or order of a court;

"Land." "Land" shall include messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land,
and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;

(g) "Lunatic" shall mean any person who has been declared a lunatic;

(h) "Mortgage" shall be applicable to every estate, interest, or property, in land or personal estate, which is merely a security for money; and "mortgagee" shall have a corresponding meaning and shall include every person deriving title under the original mortgagee;

(i) "Person of unsound mind" shall mean any person, not an infant, who, not having been declared a lunatic, is incapable, from infirmity of mind, to manage his own affairs;

(j) "Personal Estate" shall include leasehold estates and other chattels real, and also money, shares of Government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein;

(k) "Personal Representative" shall mean and include an executor, an administrator, and an administrator with the will annexed;

(l) "Possessed" shall be applicable to any vested estate for life, or of a greater description, and shall extend to estates, legal and equitable, in possession or in expectancy, in any land;

(m) "Securities" shall include stocks, funds and shares;

(n) "Seized" shall be applicable to any vested interest for life, or of a greater description, and shall extend to estates, legal and equitable, in possession, or in futurity, in any land;

(o) "Stock" shall include fully paid up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein;
"Transfer," (p) "Transfer," in relation to stock, shall include the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor to effect and complete the title in the transferee;

"Trust." (q) "Trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, shall include implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person; and "trustee" shall have a corresponding meaning and shall include a trustee however appointed and several joint trustees;

"Trustee." (r) "Trustee" shall have a corresponding meaning and shall include a trustee however appointed and several joint trustees;

"Will." (s) "Will" shall include a testament, and a codicil, and an appointment by will, or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child, by Act, and all other testamentary disposition.


2.—(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, consent by deed to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, 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) This section shall not apply to executors or administrators. 1926, c. 40, s. 2.

3. Where a trustee dies or remains out of Ontario for more than 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 acting therein, or has been convicted of an indictable offence or is bankrupt or insolvent, the person 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, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing
appoint another person or other persons to be a trustee or trustees in the place of the trustee dying, remaining out of Ontario, desiring to be discharged, refusing or being unfit or incapable. 1926, c. 40, s. 4.

4. Subject to the terms of any instrument creating a trust the sole trustee or the last surviving or continuing trustee appointed for the administration of the trust, may appoint by will another person or other persons to be a trustee or trustees in the place of such sole or surviving or continuing trustee after his death. 1926, c. 40, s. 5.

5.—(1) The Supreme Court may make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

(2) An order under this section and any consequential vesting order or conveyance shall not operate as a discharge from liability for the acts or omissions of the former or continuing trustees. 1926, c. 40, s. 6.

6. 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 or parts of the trust property, notwithstanding that no new trustees or trustee are or is 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 there will be at least two trustees to perform the trust; and

(d) Any assurance or thing requisite for vesting the trust property, or any part thereof, in the person who is the trustee, or jointly in the persons who are the trustees, shall be executed or done. 1926, c. 40, s. 7.
7. Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust. 1926, e. 40, s. 8.

8. The provisions of this Act relative to the appointment of new trustees shall apply to the case of a person nominated trustee in a will but dying before the testator. 1926, e. 40, s. 9.

NOTE.—(As to appointment of trust company as sole trustee, see The Loan and Trust Corporations Act, Rev. Stat. c. 223.)

VESTING INSTRUMENTS.

9.—(1) Where an instrument, executed after the 1st day of July, 1886, 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 personal estate so subject, shall vest in the person or persons who, by virtue of such instrument, shall become and be the trustee or trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in him, or in them as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) Where such an instrument, by which a retiring trustee is discharged under this Act, contains such a declaration as is in this section mentioned 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) This section shall not extend 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 prescribed by or under an Act of Parliament or of this Legislature.

(4) For the purpose of registration the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act. 1926, e. 40, s. 10.
VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS, AS TO LAND.

10.—(1) In any of the following cases,—

(a) Where the Supreme Court appoints or has appointed a new trustee; or

(b) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is an infant, or is out of Ontario, or cannot be found; or

(c) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or

(d) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or

(e) Where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or

(f) Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for fourteen days after the date of the requirement;

the Supreme Court may make an order, vesting the land in any such person in any such manner, and for any such estate, as the Court may direct, or releasing, or disposing of the contingent right to such person as the Court may direct.

(2) Where the order is consequential on the appointment of a new trustee the land shall be vested, for such estate as the Court may direct, in the persons who, on the appointment, are the trustees.

(3) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. 1926, c. 40, s. 11.

[For provisions as to lunatic trustee or mortgagee, see The Lunacy Act, Rev. Stat. c. 98].
11. Where any land is subject to a contingent right in an unborn person, or a class of unborn persons, who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the Supreme Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person, or class of unborn persons, would, on coming into existence, be entitled or possessed in the land. 1926, c. 40, s. 12.

12. Where any person entitled to or possessed of land, or entitled to any contingent right in land, by way of security for money, is an infant, the Supreme Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee. 1926, c. 40, s. 13.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS, AS TO STOCKS, AND CHOSES IN ACTION.

13.—(1) In any of the following cases,—

(a) where the Supreme Court appoints, or has appointed, a new trustee; or

(b) where a trustee entitled alone, or jointly with another person, to stock, or to a chose in action;

(i) is an infant, or

(ii) is out of Ontario, or

(iii) cannot be found, or

(iv) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover, a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled, or

(v) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action for fourteen days next after an order of the Supreme Court for that purpose has been served on him; or

(c) where it is uncertain whether a trustee entitled alone, or jointly with another person to stock, or to a chose in action is alive or dead,

the Supreme Court may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the
dividends or income thereof, or to sue for, or recover a chose in action, in any such person as the Court may appoint.

(2) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees.

(3) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last mentioned person either alone, or jointly with any other person whom the Court may appoint.

(4) Where a vesting order may be made under this section the Court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer.

(5) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself, or any other person, according to the order, and all incorporated banks and all companies shall obey every order made under this section.

(6) After notice in writing of an order under this section it shall not be lawful for any incorporated bank or any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

(7) The Supreme Court may make declarations and give directions concerning the manner in which the right to any stock, or chose in action, vested under the provisions of this Act, is to be exercised.

(8) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. 1926, c. 40, s. 14.

[For provisions as to lunatic trustee or mortgagee, see The Lunacy Act, Rev. Stat. c. 98].

TRUSTEES FOR CHARITIES.

14. The Supreme Court may exercise the powers herein conferred for the purpose of vesting any land or personal estate in the trustee of any charity or society over which the Court would have jurisdiction upon action duly instituted. 1926, c. 40, s. 15.

15.-(1) Where land is held by trustees for a charitable purpose and it is made to appear that the land can be no longer advantageously used for such charitable purpose or that for any other reason the land ought to be sold, a judge of the Supreme Court may make an order authorizing the sale thereof and may give such directions in relation thereto and for securing the due investment and application of the money arising from the sale as may be deemed proper.
16.—(1) An order under this Act for the appointment of a new trustee, or concerning any land or personal estate, subject to a trust, may be made upon the application of any person beneficially interested therein, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

(2) An order concerning any land or personal estate, subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by the mortgage. 1926, c. 40, s. 17.

CERTAIN POWERS AND RIGHTS OF TRUSTEES.

Purchase and Sale.

17. Subject to the provisions of The Devolution of Estates Act where a trust for sale or a power of sale of land or personal estate is vested in a trustee he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract subject to such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss. 1926, c. 40, s. 18.

18.—(1) A sale made by a trustee shall not be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) Such sale shall not, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for the sale was made. 1926, c. 40, s. 19.

Dedication or Sale for Highway Purposes.

19. With the approval of the Ontario Railway and Municipal Board or of a judge of the Supreme Court, a person who holds land or a charge or claim against it or has control of
the legal title, upon any trust or for a specified or particular purpose, may, to the extent of his estate or interest, dedicate or sell, or join in dedicating or selling, to the corporation of the municipality within which it is situate, any portion of the land required by the corporation for the work of establishing, extending, widening or diverting a street, and the Board or the judge may approve thereof if it appears that it will not have the effect of defeating or seriously affecting the substantial objects or intent of the trust or purpose; provided that the approval shall not be necessary if such dedication or sale is otherwise within such person's powers. 1926, c. 40, s. 20.

Agents.

20.—(1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust.

(2) A trustee may appoint a manager or a branch manager of a chartered bank or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise.

(3) A trustee shall not be charged with a breach of trust by reason only of his having made or concurred in making any such appointment.

(4) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor to pay or transfer the same to the trustee. 1926, c. 40, s. 21.

Insurance.

21.—(1) A trustee may insure against loss or damage by fire, tempest or other casualty any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three-fourths of the value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so. 1926, c. 40, s. 22.
Renewals of Leases.

22.—(1) A trustee of any leaseholds for lives or years which are renewable from time to time may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same land on reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite; but where, by the terms of the settlement or will, the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(2) If money is required to pay for the renewal the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the land to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose he may raise the money required by mortgage of the land to be comprised in the renewed lease, or of any other land for the time being subject to the uses or trusts to which that land is subject, and no person advancing money upon a mortgage purporting to be made under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose or to see to the due application of the money. 1926, c. 40, s. 23.

Passing of Accounts.

23.—(1) A trustee desiring to pass the accounts of his dealings with the trust estate may file his accounts in the office of the surrogate court of a county or district in which he or a co-trustee is resident or in which any part of the trust estate is situate, and the proceedings and practice upon the passing of such accounts shall be the same and have the like effect as the passing of executors' or administrators' accounts in the surrogate court; but in the case of trustees under a will the accounts shall be filed and passed in the office of the surrogate court by which probate of the will was granted.

(2) Where the compensation payable to a trustee has not been fixed by the instrument creating the trust or otherwise, the judge of the surrogate court upon the passing of the accounts of the trustee shall have power to fix the amount of compensation payable to the trustee and the trustee shall thereupon be entitled to retain out of any moneys in his hands the amount so determined. 1926, c. 40, s. 24.
Receipts.

24. The payment of any money to and the receipt thereof by any person to whom the same is payable upon any trust or for any limited purpose, and such payment to and receipt by the survivor or survivors of two or more mortgagees or holders or the executors or administrators of such survivor or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof. 1926, c. 40, s. 25. [See also The Mortgages Act, Rev. Stat. c. 140.]

Surviving Trustee.

25. Where a power or trust is given to or vested in two or more trustees jointly it may be exercised or performed by the survivor or survivors of them for the time being. 1926, c. 40, s. 26.

Investments.

26.—(1) A trustee having money in his hands which it is his duty, or which it is in his discretion to invest at interest, may invest the same in the debentures, bonds, stock or other securities of, or guaranteed by, the Government of the Dominion of Canada, or of or guaranteed by any Province of Canada, or of the Government of the United Kingdom, or of any municipal corporation in Canada, including debentures issued for public school purposes or guaranteed by any municipal corporation in Ontario, or secured by or payable out of rates or taxes levied under the law of any Province of Canada on property situated in such Province and collectible by or through the municipality in which such property is situated, in the same manner and with the same rights of enforcing payment, as in the case of general municipal taxes in such municipality, or in securities which are a first charge on land held in fee simple in Ontario, Manitoba, Saskatchewan, Alberta or British Columbia, provided such investments are in other respects reasonable and proper, or he may entrust the same to a trust company incorporated or licensed under the laws of Ontario for guaranteed investment as set out in The Loan and Trust Corporations Act, provided that in the case of a company licensed under the law of Ontario it has been approved by the Lieutenant-Governor in Council. 1926, c. 40, s. 27. [See also The Loan and Trust Corporations Act, Rev. Stat. c. 223.]

(2) Subject to the proviso in subsection 1 any money already invested in any such stock, debentures or securities shall be deemed to have been lawfully and properly invested. 1926, c. 40, s. 27. [See also The Loan and Trust Corporations Act, Rev. Stat. c. 223.]
In companies authorized to lend money upon mortgages on real estate under certain conditions.

(a) Any incorporated society or company authorized to lend money upon mortgages on real estate, or for that purpose and other purposes, having a capitalized, fixed, paid up and permanent stock not liable to be withdrawn therefrom of not less than $400,000, and a reserve fund of not less than twenty-five per centum of its paid up capital, and the stock of which has a market value of not less than seven per centum premium; or

(b) Any society or company heretofore incorporated under Chapter 164 of the Revised Statutes of Ontario, 1877, or any Act incorporated therewith, or under Chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid up, and permanent stock not liable to be withdrawn therefrom of not less than $200,000, and a reserve fund of not less than fifteen per centum of its paid up capital, and the stock of which has a market value of not less than seven per centum premium.

In certain other companies.

(2) Clauses a and b shall not apply to any society or company which has not the approval of the Lieutenant-Governor in Council as one coming within the provisions of that clause, and as one in the debentures or debenture stock of which trustees may invest or with which they may deposit money.

(3) Such approval shall not be given with respect to any society or company which does not appear to have kept strictly within its legal powers as to borrowing and investing.

(4) An Order in Council made under the authority of subsection 2 may at any time be revoked. 1926, c. 40, s. 28.

28. A trustee may from time to time vary or transpose any securities in which money in his hands is invested, whether under the authority of this Act or otherwise, into or for any other securities of any nature authorized by this Act. 1926, c. 40, s. 29.
29. A trustee lending money upon the security of any property upon which he may lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, whether such valuator carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed one-half of the value of the property as stated in the report and that it was made under the advice of the valuator expressed in the report. 1926, c. 40, s. 30.

30. Where a trustee has improperly advanced money on a mortgage security which would, at the time of the investment, have been a proper investment in all respects for a less sum than was actually advanced the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest. 1926, c. 40, s. 31.

31. A trustee shall not be chargeable with breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument of trust or by the general law. 1926, c. 40, s. 32.

PROTECTION AND INDEMNITY.

32. A trustee shall be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself or pay or discharge out of the trust property all expenses incurred in or about the execution of his trust or powers. 1926, c. 40, s. 33.

33.—(1) Where a trustee commits a breach of trust, at the instigation or request or with the consent in writing of a beneficiary, the Supreme Court may make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

(2) This section shall apply notwithstanding that the beneficiary is a married woman entitled for her separate use and restrained from anticipation. 1926, c. 40, s. 34.
TECHNICAL BREACHES OF TRUST.

34. If in any proceeding affecting a trustee or trust property it appears to the court that a trustee, or that any person who may be held to be fiduciarily responsible as a trustee, is or may be personally liable for any breach of trust whenever the transaction alleged or found to be a breach of trust occurred, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which he committed such breach, the court may relieve the trustee either wholly or partly from personal liability for the same. 1926, c. 40, s. 35.

[As to limitation of actions against trustees, see The Limitations Act, Rev. Stat. c. 106.]

PAYMENT INTO COURT.

35.—(1) Where any money belonging to a trust is in the hands or under the control of or is vested in a sole trustee or several trustees, and it is the desire of such trustee, or of the majority of such trustees, to pay the money into court, the Supreme Court may order the payment into court to be made by the sole trustee, or by the majority of the trustees, without the concurrence of the other or others if such concurrence cannot be obtained.

(2) Where any such money is deposited with a banker or broker or other depository the court may order payment thereof to the accountant of the Supreme Court, and payment, made in pursuance of such order, shall be valid and take effect as if the same had been made on the authority, or by the act, of all the persons entitled to the money paid.

(3) Any person with whom trust money has been deposited or to whose hands trust money has come, where the trustee has been absent from Ontario for a year and is not likely to return at an early date, or in the event of the trustee’s death, or where the trustee in Ontario cannot give an acquittance of the money, may make an application similar to that authorized by subsection 1.

(4) Where, on the passing of the final accounts of a personal representative, guardian or trustee by the judge of a surrogate court, there is found to be in the hands of such personal representative, guardian or trustee any money belonging to an infant or to a lunatic or person of unsound mind, or to a person whose address is unknown, it shall be the duty of such personal representative, guardian or trustee to pay the money into the Supreme Court to the credit of the person who is entitled to it.
(5) A certified copy of the order or report of the judge shall be left with the accountant when the money is paid in, and the person paying it in shall be entitled to deduct $5 for his costs.

(6) Where an infant, lunatic or person of unsound mind is entitled to any money, the person by whom such money is payable may pay the same into the Supreme Court to the credit of such infant, lunatic or person of unsound mind and this shall be a sufficient discharge for the money so paid into court.

(7) Where a trustee desires to be relieved from his trust, the court may order all securities held for the trust to be transferred to the Public Trustee.

(8) Money paid into court shall be subject to the order of Disposition.
The court. 1926, c. 40, s. 36.

PERSONAL REPRESENTATIVES AND DEVISEES IN TRUST.

Removal of Personal Representatives.

36.—(1) The Supreme Court may remove a personal representative upon any ground upon which such Court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed.

(2) Any person so appointed shall, unless the Court otherwise orders, give such security as he would be required to give if letters of administration were granted to him under The Surrogate Courts Act.

(3) The order may be made upon the application of any who may executor or administrator desiring to be relieved from the duties of the office, or of any executor or administrator complaining of the conduct of a co-executor or co-administrator, or of any person interested in the estate of the deceased.

(4) Subject to any rules to be made under The Judicature Procedure. Act the practice in force for the removal of any other trustee shall be applicable to proceedings to be taken in the Supreme c. 88. Court under this section.

(5) Where the executor or administrator removed is not a when new sole executor or administrator the Court need not, unless it sees fit, appoint any person to act in the room of the person removed, and if no such appointment is made the rights and estate of the executor or administrator removed shall pass to the remaining executor or administrator as if the person so removed had died.
(6) The executor of any person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors.

(7) A certified copy of the order of removal shall be filed with the surrogate clerk, and another copy with the registrar of the surrogate court by which probate or administration was granted, and such officers shall, at or upon the entry of the grant in the registers of their respective offices, make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where such grant is indexed.

(8) The date of the grant shall be endorsed on the copy of the order filed with the surrogate clerk.

(9) Where the estate is less than $1,000, the jurisdiction conferred by this section may be exercised by the surrogate court. 1926, c. 40, s. 37.

RIGH TS AND LIABILITIES OF PERSONAL REPRESENTATIVES.

37.—(1) Except in cases of libel and slander, the executor or administrator of any deceased person may maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do; and the damages when recovered shall form part of the personal estate of the deceased.

(2) Except in cases of libel and slander, if a deceased person committed a wrong to another in respect of his person or property, the person wronged may maintain an action against the executor or administrator of the person who committed the wrong.

(3) An action under this section shall not be brought after the expiration of one year from the death of the deceased. 1926, c. 40, s. 38.

[As to actions and distress for rent by personal representatives see The Landlord and Tenant Act, Rev. Stat. c. 190; and as to liability of personal representatives of a deceased joint contractor see The Mercantile Law Amendment Act, Rev. Stat. c. 161.]

38. A personal representative shall have an action of account as the testator or intestate might have had if he had lived. 1926, c. 40, s. 39.

[As to assignment and discharge of mortgages by executors, etc., see The Mortgages Act, Rev. Stat. c. 140.]
Sec. 42. TRUSTEES. Chap. 150. 1501

39. An administrator with the will annexed or an executor to whom probate is granted shall have all the power conferred by the testator upon the executor named in his will and may in all respects act as effectually as though he alone had been named by the testator as his sole executor. 1926, c. 40, s. 40.

Execution of Powers.

40. Where there is in a will a direction, express or implied, to sell, dispose of, appoint, mortgage, incumber or lease any land, and no person is by the will or otherwise by the testator appointed to execute and carry the same into effect the executor, if any, named in such will may execute and carry into effect every such direction in respect of such land, and any estate or interest therein in the same manner and with the same effect as if he had been appointed by the testator for that purpose. 1926, c. 40, s. 41.

41. Where from any cause a court of competent jurisdiction has committed to a person, who has given security to the satisfaction of such court for his dealing with such land and its proceeds, letters of administration with a will annexed which contains an express or implied power to sell, dispose of, appoint, mortgage, incumber or lease any land, whether such power is conferred on an executor named in the will or the testator has not by the will or otherwise appointed a person to execute it, the administrator may exercise the power in respect of such land in the same manner and with the same effect as if he had been appointed by the testator for that purpose. 1926, c. 40, s. 42.

Contract of Deceased.

42. Where any person has entered into a contract in writing for the sale and conveyance of land, and such person has died intestate, or without providing by will for the conveyance of such land to the person entitled or to become entitled to such conveyance, if the deceased would be bound, were he alive, to execute a conveyance, his personal representative shall make and give to the person entitled to the same a good and sufficient conveyance of such land, of such nature as the deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor; and the conveyance shall be as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but shall not have any further validity or effect. 1926, c. 40, s. 43.
Devises in Trust.

43.—(1) Where, by any will coming into operation after the 18th day of September, 1865, a testator charges his land, or any specific part thereof, with the payment of his debts or with the payment of any legacy or other specific sum of money, and devises the land so charged to his executors or to a trustee without any express provision for the raising of such debt, legacy or sum of money out of such land, the devisee may raise such debt, legacy or money by a sale of such land or any part thereof, or by a mortgage of the same.

(2) Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by this section, or any of them, have been duly and correctly exercised by the person acting in virtue thereof. 1926, c. 40, s. 44.

44. Every personal representative, as respects the additional powers vested in him by this Act, and any money or assets by him received in consequence of the exercise of such powers, shall be subject to all the liabilities, and compellable to discharge all the duties which, as respects the acts to be done by him under such powers, would have been imposed upon a person appointed by the testator, or would have been imposed by law upon any person appointed by law, or by any court of competent jurisdiction to execute such power. 1926, c. 40, s. 45.

45. Where there are several personal representatives, and one or more of them shall die, the powers conferred upon them shall vest in the survivor or survivors, unless there is some provision to the contrary in the will. 1926, c. 40, s. 46.

EFFECT OF REVOCATION OF AN ERRONEOUS GRANT.

46.—(1) Where a court of competent jurisdiction has admitted a will to probate, or has appointed an administrator, notwithstanding that the grant of probate or the appointment may be subsequently revoked as having been erroneously made, all acts done under the authority of such probate or appointment, including all payments made in good faith to or by the personal representative, shall be as valid and effectual as if the same had been rightly granted or made; but upon revocation of the probate or appointment, in cases of an erroneous presumption of death, the supposed decedent, and in other cases the new personal representative may, subject to the provisions of subsections 2 and 3, recover from the person who acted under the revoked grant or appointment any part of the estate remaining in his hands undistributed and, subject to The Limitations Act, from any person who erroneously received any part of the estate as a devisee, legatee or one of the next of kin, or as a husband or wife of
the decedent or supposed decedent, the part so received or the value thereof.

(2) The person acting under the revoked probate or appointment may retain out of any part of the estate remaining in his hands undistributed his proper costs and expenses incurred in the administration.

(3) Nothing in this section shall protect any person acting as personal representative where he has been party or privy to any fraud whereby the grant or appointment has been obtained, or after he has become aware of any fact by reason of which revocation thereof is ordered unless, in the latter case, he acts in pursuance of a contract for valuable consideration and otherwise binding made before he became aware of such fact. 1926, c. 40, s. 47.

ADMINISTRATION OF ESTATES.

47.—(1) A personal representative may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2) A personal representative, 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 these 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 done by him or them in good faith. 1926, c. 40, s. 48.

NOTE.—As to contested claims, see Surrogate Courts Act. Rev. Stat. c. 94.

48. On the administration of the estate of a deceased person, in the case of a deficiency of assets, debts due to the Crown and to the personal representative of the deceased person, and debts to others, including therein debts by judgment or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as are payable in like order of administration as simple contract debts shall be paid pari passu and without any preference or priority of debts of one rank or nature over those of another, but nothing herein shall prejudice any lien existing during the lifetime of the debtor on any of his property. 1926, c. 40, s. 49.
49.—(1) Where a personal representative, liable as such to the rents, or upon the covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate has satisfied all liabilities under the lease or agreement for a lease, which accrued due and were claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for lease, to a purchaser thereof, he may distribute the residuary estate of the deceased to and among the parties entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any future liability under such lease or agreement for lease.

(2) The personal representative so distributing the residuary estate shall not be personally liable in respect of any subsequent claim under the lease or agreement for lease.

(3) Nothing in this section shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom they have been distributed. 1926, c. 40, s. 50.

50.—(1) Where a personal representative, liable as such to the rent or upon the covenants or agreements contained in any conveyance on chief rent or rent-charge, whether any such rent is by limitation of use, grant or reservation, or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate, has satisfied all liabilities under the conveyance, or agreement for a conveyance, which accrued due and were claimed up to the time of the conveyance by him hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned such agreement for conveyance to a purchaser thereof, he may distribute the residuary estate of the deceased to and amongst the persons entitled thereto, without appropriating any part, or any further part thereof, as the case may be, to meet any further liability under such conveyance or agreement for conveyance.

(2) A personal representative so distributing the residuary estate shall not be personally liable in respect of any subsequent claim under the conveyance or agreement for conveyance.

(3) Nothing in this section shall prejudice the right of the grantor, or those claiming under him, to follow the assets of
the deceased into the hands of the person or persons to or amongst whom they have been distributed. 1926, c. 40, s. 51.

51.—(1) Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or of a particular class or classes of creditors, where the creditors are not designated by name therein, or a personal representative has given such or the like notice as, in the opinion of the court in which such trustee, assignee, or personal representative is sought to be charged, would have been directed to be given by the Supreme Court in an action for the execution of the trusts of such deed or assignment, or in an administration suit, for creditors and others to send in to such trustee, assignee, or personal representative, their claims against the person for the benefit of whose creditors such deed or assignment is made, or against the estate of the testator or intestate, as the case may be, at the expiration of the time named in the notices, or the last of the notices, for sending in such claims, he may distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof amongst the persons entitled thereto, having regard to the claims of which he has then notice, and shall not be liable for the proceeds of the trust estate, or assets, or any part thereof so distributed to any person of whose claim he had not notice at the time of the distribution.

(2) Nothing in this section shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate, or assets, or any part thereof into the hands of persons who have received the same.

(3) Subsection 1 shall not apply to heirs, next of kin, devisees or legatees claiming as such. 1926, c. 40, s. 52.

PROPERTY SUBJECT TO POWER, WHEN TO BE ASSETS.

52. Property over which a deceased person had a general power of appointment, which he might have exercised for his own benefit without the assent of any other person, shall be assets for the payment of his debts where the same is appointed by his will; and, under an execution against the personal representatives of such deceased person, such assets may be seized and sold after the deceased person's own property has been exhausted. 1926, c. 40, s. 53.

UNDISPOSED OF RESIDUE.

53.—(1) When a person dies having by will appointed an executor, such executor, in respect of any residue not expressly disposed of, shall be deemed to be a trustee for the person, if any, who would be entitled to the estate under The Devolution of Estates Act in case of an intestacy, unless it appears by the will that the executor was intended to take such residue beneficially.
(2) Nothing in this section shall prejudice any right in respect of any residue not expressly disposed of to which, if this Act had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator's estate under The Devolution of Estates Act in case of an intestacy. 1926, c. 40, s. 54.

Rights and Liability of Representatives of Executors and Administrators.

54. Executors of executors shall have the same actions for the debts and property of the first testator as he would have had if in life; and shall be answerable for such of the debts and property of the first testator as they shall recover as the first executors would be if they had recovered the same. 1926, c. 40, s. 55.

55. The personal representative of any person who, as executor or as executor in his own wrong, or as administrator, wastes or converts to his own use any part of the estate of any deceased person shall be liable and chargeable in the same manner as his testator or intestate would have been if he had been living. 1926, c. 40, s. 56.

Estates of Insolvent Deceased Persons.

56.—(1) On the administration of the estate of a deceased person, in case of a deficiency of assets, every creditor in proving his claim shall state whether he holds any security for his claim or any part thereof, and shall give full particulars of the same, and if such security is on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable the creditors shall put a specified value on such security, and the personal representative, under the authority of the other creditors of the estate of the deceased, or of the court if the estate is being then administered under the direction of or by a court, may either consent to the creditor's ranking for the claim, after deducting such valuation, or may require from the creditor an assignment of the security at an advance of ten per centum upon the specified value to be paid out of the estate as soon as the personal representative has realized such security, in which he shall be bound to the exercise of ordinary diligence; and in either case the difference between the value at which the security is retained or taken, as the case may be, and the amount of the claim of the creditor shall be the amount for which he shall rank upon the estate of the deceased debtor.

(2) If the claim of the creditor is based upon a negotiable instrument upon which the estate of the deceased debtor is only indirectly or secondarily liable, and which is not mature
or exigible, the creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the person primarily liable thereon, as his security for the payment thereof, but after the maturity of such liability and its non-payment he shall be entitled to amend and re-value his claim. 1926, c. 40, s. 57.

57. A creditor holding any such security on the estate of a deceased debtor, or on the estate of a third person for whom the estate of such debtor is only indirectly or secondarily liable, may release or deliver up such security to the personal representative, or he may, by statutory declaration delivered to the personal representative, set a value upon such security; and from the time he shall have so released or delivered up such security or valued the same the debt to which such security applied shall be considered as an unsecured debt of the estate, or as being secured only to the extent of the value set upon such security; and the creditor may rank as and exercise all the rights of an ordinary creditor for the amount of his claim, or to the extent only of so much thereof as exceeds the value set upon such security as the case may be. 1926, c. 40, s. 58.

58.—(1) Where a person claiming to be entitled to rank on the estate holds security for his claim, or any part thereof, of such a nature that he is required by this Act to value it, and he fails to value the same, the judge of the surrogate court who granted the probate or letters of administration may, upon summary application by the personal representative, of which application three days’ notice shall be given to such claimant, order that unless a specified value shall be placed on such security and notified in writing to the personal representative within a time to be limited by the order such claimant shall, in respect of the claim, or the part thereof for which the security is held, be wholly barred of any right to share in the proceeds of such estate.

(2) If a specified value is not placed on such security and notified in writing to the personal representative according to the exigency of the order, or within such further time as the judge may allow, the claim or the part thereof, as the case may be, shall be wholly barred as against such estate.

(3) Where an estate is being administered by or under the direction of a court such court shall exercise the jurisdiction conferred by this section upon the judge of the surrogate court. 1926, c. 40, s. 59.

[As to priority in respect of wages, see The Wages Act, Rev. Stat. c. 176.]
1508 Chap. 150. TRUSTEES. Sec. 59 (1).

SUMMARY APPLICATION TO COURT FOR ADVICE.

59.—(1) A trustee, guardian or personal representative may, without the institution of an action, apply to the Supreme Court for the opinion, advice or direction of the Court on any question respecting the management or administration of the trust property or the assets of his ward or his testator or intestate.

(2) The trustee, guardian or personal representative acting upon the opinion, advice or direction given shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, guardian, or personal representative, in the subject matter of the application, unless he has been guilty of some fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction. 1926, c. 40, s. 60.

ALLOWANCE TO TRUSTEES AND PERSONAL REPRESENTATIVES.

60.—(1) A trustee, guardian or personal representative, shall be entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the estate, as may be allowed by a judge of the Supreme Court or by any master or referee to whom the matter may be referred.

(2) The amount of such compensation may be settled although the estate is not before the Court in an action.

(3) The judge of a surrogate court, in passing the accounts of a trustee or of a personal representative or guardian, may from time to time allow to him a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the estate.

(4) Where a barrister or solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be deemed fair and reasonable in respect of such services.

(5) Nothing in this section shall apply where the allowance is fixed by the instrument creating the trust. 1926, c. 40, s. 61.

MISCELLANEOUS.

61. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 1 of The Vendors and Purchasers Act. 1926, c. 40, s. 62.
Indemnity.

62. This Act, and every order purporting to be made under it, shall be a complete indemnity to all persons for any acts done pursuant thereto. 1926, c. 40, s. 63.

Note.—See also The Judicature Act, Rev. Stat. c. 88.

As to the protection of purchasers, see also section 56 of The Conveyancing Act, Rev. Stat. c. 137.

COSTS.

63. The Supreme Court may order the costs of and incidental to any application, order, direction, conveyance, assignment or transfer under this Act, or any part thereof, to be paid or raised out of the property in respect of which the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the Court may deem proper. 1926, c. 40, s. 64.

APPLICATION OF ACT.

64. Subject to section 65, unless otherwise expressed there Application in, the provisions of this Act shall apply to all trusts when of Act. ever created and to all trustees whenever appointed. 1926, c. 40, s. 65.

65. The powers, rights and immunities conferred by this Additional Act are in addition to those conferred by the instrument powers given. creating the trust, and shall have effect subject to the terms thereof. 1926, c. 40, s. 66.

66. Nothing in this Act shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do by the instrument creating the trust. 1926, c. 40, s. 67.