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CHAPTER 96

TRUSTS

Ordinances AN ORDINANCE TO DEFINE AND AMEND THE LAW RELATING TO TRUSTS.

Nos. 9 of 1917,
4 of 1918,
1 of 1934.

Acts
Nos. 7 of 1968,
30 of 1971.

[16th April, 1918.]

CHAPTER I

PRELIMINARY

Short title. 1. This Ordinance may be cited as the Trusts Ordinance.

Application of English law. 2. All matters with reference to any trust, or with reference to any obligation in the nature of a trust arising or resulting by the implication or construction of law, for which no specific provision is made in this or any other enactment, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England.

Interpretation. 3. In this Ordinance, unless the context or the subject-matter otherwise implies—

- (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 person, or of another person and the owner, of such a character that, while the ownership is nominally vested in the owner, the right to the beneficial enjoyment of the property is vested or to be vested in such other person, or in such other person concurrently with the owner;
- (b) the person who reposes or declares the confidence is called the "author of the trust";
- (c) the person who accepts the confidence is called the "trustee";
- (d) the person for whose benefit the confidence is accepted is called the "beneficiary";
- (e) the subject-matter of the trust is called "trust property" or "trust money";

(f) "the beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust property;

(g) the instrument, if any, by which the trust is declared is called the "instrument of trust";

(h) the expression "instrument of trust" includes a scheme settled under Chapter X of this Ordinance;

(i) 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";

(j) 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 any person whom the court may determine to have been his agent for the purpose of receiving or obtaining such information;

(k) every person is "competent to contract" who is of the age of majority, or has otherwise acquired the status of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified by law from contracting;

(l) a "married woman" is competent to contract;

Provided that in any case in which the consent, concurrence, acquiescence, or ratification of a beneficiary is referred to, the power of consent, concurrence, acquiescence, or ratification of a married woman who is a beneficiary

shall be subject to the same conditions and limitations as her power to contract with reference to the matter in question ;

(m) " court " means the District Court having jurisdiction in the matter in question, or a District Court upon which the Court of Appeal, on the application of any party interested, may confer jurisdiction for the purposes either of the trust generally or of the matter in question ;

(n) " notarially executed " means executed in the manner prescribed by section 2 of the Prevention of Frauds Ordinance, and any reference to " notarial execution " shall be deemed to include a reference to execution in accordance with the Deeds and Documents (Execution before Public Officers) Ordinance.

(b) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death to B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. (1) Subject to the provisions of section 107, no trust in relation to immovable property is valid unless declared by the last will of the author of the trust or of the trustee, or by a non-testamentary instrument in writing signed by the author of the trust or the trustee, and notarially executed. Trust of immovable property.

(2) No trust in relation to movable property is valid unless declared by the last will of the author of the trust or of the trustee, or by a non-testamentary instrument in writing signed by the author of the trust or the trustee, or unless the ownership of the property is transferred to the trustee by delivery. Trust of movable property.

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

6. Subject to the provisions of sections 5 and 107, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts— Creation of trust.

- (a) an intention on his part to create thereby a trust,
- (b) the purpose of the trust,
- (c) the beneficiary,
- (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 amongst 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.

CHAPTER II

OF THE CREATION OF TRUSTS

Lawful purpose.

4. (1) A trust may be created for any lawful purpose. The purpose of a trust is lawful, unless—

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

(2) 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 immovable and situate in a foreign country, the law of such country.

Illustrations

- (a) 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.

- (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.

Who may create trusts.

7. A trust may be created—

- (a) by every person competent to contract ; and
- (b) with the permission of the court 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.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary. It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

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

Disclaimer by beneficiary.

(2) 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.

Who may be trustee.

10. (1) 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 bound to accept trust.

(2) No one is bound to accept a trust.

Acceptance of trust.

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

Disclaimer of trust.

(4) 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.

(5) 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. (1) 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.

Trustee to execute trust.

(2) Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by the court.

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.

Trustee to inform himself of state of trust property.

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 or 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.

Trustee to protect title to trust property.

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 immovable property, which has been given to the author of the trust by an unregistered instrument. The trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary.

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.

Care required from trustee.

15. A trustee is bound, subject to the provisions of the instrument of trust, 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 Colombo, is a trustee for B, living in London. 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 London. The bills are dishonoured. A is not bound to make good the loss.

(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 his 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, or unless the court otherwise directs, to convert the property into property of a permanent and immediately profitable character.

Conversion of perishable property.

17. (1) 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.

Trustee to be impartial.

(2) 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.

Trustees to prevent waste.

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.

Accounts and information.

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.

Investment of trust money.

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 the Government of Sri Lanka ;
- (b) on a first mortgage of immovable property situated in Sri Lanka :

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 wholly or mainly of buildings, exceeds by one-half the mortgage moneys ;

- (c) in promissory notes, debentures, stock or other securities issued by a Government corporation, institution or agency and guaranteed by the Government of Sri Lanka ;

- (d) on any other security expressly authorized by the instrument of trust or by any rule which the Minister may from time to time prescribe in that behalf.

21. Nothing in section 20 shall apply to investments made before the commencement of this Ordinance, or shall be deemed to preclude a deposit of trust money in a Government Savings Bank or in the National Savings Bank.

Saving as to existing investments and investments in Government Savings Bank or National Savings Bank. [§2, 7 of 1968.] [§89, 30 of 1971.]

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 the court.

Sale by trustee directed to sell within specified time.

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. (1) 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 duress 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.

Liability for breach of trust.

(2) 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 ;

TRUSTS

- (d) where he may be fairly presumed to have received interest ;
- (e) where the breach consists in failure to invest trust money and to accumulate the interest or dividend 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.

(3) 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 centum* per annum, unless the court otherwise directs.

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. 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 immovable 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), (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. No set-off allowed to trustee.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor. Non-liability for predecessor's default.

26. (1) 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 : Non-liability for co-trustee's default.

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 inquiry 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.

Joining in receipt for conformity.

(2) A co-trustee who joins in signing a receipt for trust property, if he proves, or if it otherwise appears 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.

Several liability of co-trustees.

27. (1) 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.

Contribution as between co-trustees.

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.

(2) Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

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.

Liability of trustee where beneficiary's interest is forfeited to Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to 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 Government may direct in this behalf.

Indemnity of trustees.

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.

Relief of trustee from consequences of breach of trust.

31. If it appears to the court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, 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, then the court may relieve the trustee either wholly or partly from personal liability for the same.

CHAPTER IV

OF THE RIGHTS AND POWERS OF TRUSTEES

Right to title deed.

32. 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.

Right to reimbursement of expenses.

33. (1) 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, reservation, or benefit of the trust property, or the protection or support of the beneficiary.

(2) 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 the court) shall be enforced only by prohibiting any disposition of the trust property without previous payment of such expenses and interest.

(3) 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.

Right to be
recouped for
erroneous
overpayment.

(4) Where a trustee has by mistake made an overpayment 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.

Right to
indemnity from
gainer by
breach of trust.

34. (1) A person other than a trustee, or a transferee in good faith for consideration 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 such person is a beneficiary, the trustee has a charge on his interest for such amount.

(2) 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.

Illustration

The trustee of a family trust bona fide pays over a certain part of the trust moneys to a member of the family contrary to the terms of the instrument of trust, and the court orders the trustee to replace the money. He is entitled to be indemnified by the person to whom he has paid it.

Right to apply
to court for
opinion in
management of
trust property.

35. (1) Any trustee may, without instituting a suit, apply by petition to the court 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.

(2) 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.

(3) 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.

(4) The costs of every application under this section shall be in the discretion of the court to which it is made.

Right to
settlement of
accounts.

36. 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.

37. In addition to the powers expressly conferred by this Ordinance 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.

General
authority of
trustee.

38. (1) Except with the permission of the court, and subject to any special statutory provision in that behalf, no trustee shall lease trust property for a term expiring at a date later than the end of ten years from the date of the execution of the lease, or if the date of the termination of the trust is ascertained, for a term expiring at a date later than the date of such termination, nor without reserving the best yearly rent that can be reasonably obtained.

Power to lease.

(2) Any lease executed without the permission of the court for a term exceeding the limits authorized by this section shall be void to the extent to which it so exceeds the said limits.

39. 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.

Power to sell in
lots, and either
by public
auction or
private
contract.

40. (1) The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or terms of payment, 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 :

Power to sell
under special
conditions.

Power to buy
in and re-sell.

Provided he shall have acted in good faith and without negligence.

Time allowed for selling trust property.

(2) 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.

Power to convey.

41. 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.

Power to vary investments.

42. (1) 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.

Power of court to authorize sale, exchange, &c., of trust property.

(2) When any immovable property is the subject-matter of any trust, the court may authorize any sale, exchange, mortgage, or other disposition of the property, which it considers to be in the interests of the objects of the trust.

(3) Nothing contained in subsection (2) shall be deemed to derogate from the rights of a trustee under subsection (1).

Power to apply property of minors, &c., for their maintenance.

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

(2) The trustee shall accumulate all the residue of the income in the way of compound interest by investing the same

and the resulting income thereof from time to time in securities in which he is by the instrument of trust, if any, or by section 20 of this Ordinance, authorized to invest trust money, and shall hold the accumulations for the benefit of the minor ; but so that the trustee may at any time, if he thinks fit, apply the accumulations, or any part thereof, as if the same were income arising in the then current year.

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

(4) Where the income of the trust property is insufficient for the minor's maintenance, or education, or marriage, or advancement in life, the trustee may, with the permission of the court, and not otherwise, apply the whole or any part of such property for or towards such maintenance, education, marriage, or advancement.

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

Power to give receipts.

45. (1) Two or more trustees acting together, or if there is only one trustee of the trust, such trustee may, if and as they or he shall think fit—

Power to compound, &c.

(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 or him seem expedient, without being responsible for any loss occasioned by any act or thing so done by them or him in good faith and without negligence.

(2) The powers conferred by subsection (1) 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.

(3) This section applies only if and as far as a contrary intention is not 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.

(4) Nothing in this section shall be deemed to affect the application of the law relating to the property of minors.

Power to several trustees of whom one disclaims or dies.

46. 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.

Suspension of trustee's power by decree.

47. 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 Court of Appeal.

CHAPTER V

OF THE DISABILITIES OF TRUSTEES

Trustee cannot renounce after acceptance.

48. A trustee who has accepted the trust cannot afterwards renounce it, except—

- (a) with the permission of the court ; 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.

Trustee cannot delegate.

49. 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 ; or
- (e) the court so directs.

Explanation.—The appointment of an attorney or agent 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.

50. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides, or except when on good cause shown the court otherwise directs.

Co-trustees cannot act singly.

51. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by the court.

Control of discretionary power.

52. (1) 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, an order of court, or express statutory provision in that behalf, a trustee has no right to remuneration for his trouble, skill, and loss of time in executing the trust.

Trustee may not charge for services.

(2) Nothing in this section shall be deemed to prejudice the right of any resident trustee actually managing the daily administration of any religious foundation, in respect of which the remuneration of the trustee shall not have been settled under section 108, to such remuneration as has been in practice received :

Provided that such remuneration shall in no case exceed ten *per centum* of the gross income of the foundation.

Trustee may not use trust property for his own profit.

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

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.

Trustee for sale or his agent may not buy.

54. 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.

(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.

Trustee may not buy beneficiary's interest without permission.

55. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of the court, 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.

59. 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.

Right to inspect and take copies of instrument of trust, accounts, &c.

Trustee for purchase.

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.

60. 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.

Right to transfer beneficial interest.

Co-trustees may not lend to one of themselves.

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

61. When 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, or until the execution of the trust becomes practicable.

Right to sue for execution of trust.

CHAPTER VI

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

Right to rents and profits.

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

Right to specific execution.

58. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest.

62. Subject to the provisions of the instrument of trust, the beneficiary has a right to require that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Right to proper trustees.

Right to transfer of possession.

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.

Explanation 1.—The following are not proper persons within the meaning of this section:—
An alien enemy; a person having an interest inconsistent with that of the beneficiary; a person in insolvent circumstances; a minor.

Explanation 2.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains majority, and then to transfer

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 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.

63. The beneficiary has a right to require 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.

64. (1) Where a trustee has wrongfully bought trust property, the beneficiary has a right to have the property declared subject to the trust, or re-transferred 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.

(2) 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 re-transferred, 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 re-transferred where he, being competent to contract, has himself, without duress 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.

65. (1) Where trust property comes into the hands of a third person inconsistently with the trust, the beneficiary may institute a suit for a declaration that the property is comprised in the trust.

Following trust property into the hands of third persons; into that into which it has been converted.

(2) Where the trustee has disposed of trust property, and the money or other property which he has received therefor can be traced in his hands or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly 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.

66. (1) Nothing in section 65 entitles the beneficiary to any right in respect of property in the hands of—

Saving of rights of certain transferees.

Right to compel to perform any act of duty.

Wrongful purchase by trustee.

(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.

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

(3) Nothing in section 65 applies to money or currency notes in the hands of a bona fide holder to whom they have passed in circulation, or to negotiable instruments in the hands of a bona fide holder for value, or shall be deemed to affect sections 22 and 23 of the Sale of Goods Ordinance, or the rights of any holder in good faith for consideration of any document of title which by law passes the ownership of goods to which it relates by endorsement or delivery, or the liability of a person to whom a debt or charge is transferred, or the right of a person who holds property under a title declared indefeasible by statute or of his successor in title.

Acquisition by trustee of trust property wrongfully converted.

67. 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.

Right in case of blended property.

68. 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.

Wrongful employment by partner trustee of trust property for partnership purposes.

69. 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 therefor 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.

70. Where one of several beneficiaries being competent to contract—

Liability of beneficiary joining in breach of trust.

(a) joins in committing a 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.

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

Rights and liabilities of beneficiary's transferee.

CHAPTER VII

OF VACATING THE OFFICE OF TRUSTEE

72. The office of a trustee is vacated by his death or by his discharge from his office. Office how vacated.

73. A trustee may be discharged from his office only as follows :— Discharge of trustee.

- (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 or by any scheme under this Ordinance ;
- (d) by appointment under this Ordinance of a new trustee in his place ;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, by the consent of all the beneficiaries being competent to contract ; or
- (f) by the court.

consent of the court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

(2) Every such appointment shall be by writing under the hand of the person making it, and shall be notarially executed.

(3) Every instrument by which any such appointment is made, in so far as it affects immovable property, shall contain the particulars required by section 13 of the Registration of Documents Ordinance and shall be deemed to be an instrument affecting land for the purposes of the said Ordinance :

Provided that no deed of appointment of a trustee of any charitable trust shall be deemed to be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

(4) On an appointment of a new trustee, the number of trustees may be increased.

(5) 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.

76. (1) Whenever any such vacancy or disqualification occurs, and it is found not reasonably practicable to appoint a new trustee under section 75, or where for any other reason the due execution of the trust is or becomes impracticable, the beneficiary may, without instituting a suit, apply by petition to the court for the appointment of a trustee or a new trustee, and the court may appoint a trustee or a new trustee accordingly.

Appointment by court.

(2) In appointing new trustees, the court shall have regard—

Rules for selecting new trustees.

(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 ;

Petition to be discharged from trust.

74. Notwithstanding the provisions of section 11, every trustee may apply by petition to the court 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.

Appointment of new trustees on death, &c.

75. (1) Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is absent from Sri Lanka for such a continuous period and under such circumstances that, in the opinion of the court, it is desirable, in the interests of the trust, that his office should be declared vacant, or is declared an insolvent, or desires to be discharged from the trust, or refuses or is or becomes, in the opinion of the court, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(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

- (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.

(3) Every order of appointment made under this section shall, in so far as it affects immovable property, contain the particulars required by section 13 of the Registration of Documents Ordinance and section 29 of the said Ordinance shall apply to every such order in the same manner as if it were an instrument which affects land :

Provided that no order of appointment of a trustee of any charitable trust under this section shall be deemed to be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

Vesting of trust property in new trustees.

77. (1) Whenever any new trustee is appointed under section 75 or section 76, or under or in pursuance of any other provision of this Ordinance, all the trust property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representatives of any trustee, and all the rights of suit in relation thereto of the trustee in whose place the appointment is made, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers of new trustees.

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

(3) Where any trust property comprises any stocks or any shares or securities transferable in any book kept by any company or society, or any shares in any ship registered under the law relating to merchant shipping, an instrument or order of appointment shall not take effect so far as it relates thereto, unless and until notice in writing of the appointment under such

instrument or order shall have been given by or on behalf of the new trustee so appointed to the person or authority in charge of the register or book in which such stocks, shares, or securities, as the case may be, are entered, and upon such notice in writing being given, and on reasonable proof being furnished that such stocks, shares, or securities form part of the said trust property, the new trustee shall be entitled to a transfer into his name of any such stocks, shares, or securities, and to the receipt of all dividends, interest, or other sums due, or to become due, in respect of any such stocks, shares, or securities.

78. 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. Survival of trust.

CHAPTER VIII

OF THE EXTINCTION OF TRUSTS

79. A trust is extinguished—

Trust how extinguished.

- (a) when its purpose is completely fulfilled ; or
- (b) when its purpose becomes unlawful ; or
- (c) subject to the powers of the court under Chapter X and to section 110 (4), 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.

80. (1) A trust created by will may be revoked at the pleasure of the testator. Revocation of trust.

(2) A trust created otherwise than by will 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.

Revocation not to defeat what trustees have duly done.

81. 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

CONSTRUCTIVE TRUSTS

Where obligation in nature of trust is created.

82. An obligation in the nature of a trust (hereinafter referred to as a "constructive trust") is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

83. Where the owner of property transfers or bequeaths it, and it cannot reasonably 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, reasonably be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.
- (b) 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, reasonably 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.
- (c) 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 reasonably be inferred from the circumstances that the gift was for B's benefit.

84. 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.

Transfer to one for consideration paid by another.

85. 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.

Trust incapable of execution or executed without exhausting trust property.

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 trust 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 per cents, 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 representatives.

- (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 a particular form of worship. 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 and 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.

86. Where the owner of property transfers it to another for an illegal purpose, and such purpose is not carried out 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.

Transfer for illegal purpose.

Bequest for illegal purpose.

87. (1) 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.

Bequest of which revocation is prevented by duress.

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

Transfer pursuant to rescindable contract.

88. 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, and subject to any compensation or other relief to which the transferee may be by law entitled.

Debtor becoming creditor's representative.

89. 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.

Advantage gained by fiduciary.

90. 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.

(c) 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.

(d) 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.

(e) 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.

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

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

91. 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.

Advantage gained by exercise of undue influence.

92. Where a co-owner, mortgagee, or other person with a qualified interest in 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 person, 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.

Advantage gained by qualified owner.

Illustrations

(a) A, an executor, buys at an under-value 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, 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.

Illustration

A mortgages land to B, who enters into possession. B allows taxes due on the land 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.

Property acquired with notice of existing contract.

93. 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 :

Provided that in the case of a contract affecting immovable property, such contract shall have been duly registered before such acquisition.

Purchase by person contracting to buy property to be held on trust.

94. 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.

Advantage secretly gained by one of several compounding creditors.

95. 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.

Constructive trusts in cases not expressly provided for.

96. 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 revoked by A as to Rs. 10,000 and B thereupon holds that sum for the benefit of A.

97. 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, save as in

Obligor's duties, liabilities, and disabilities.

this Ordinance otherwise provided, 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 anyone 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.

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

Saving rights of bona fide purchasers.

CHAPTER X

CHARITABLE TRUSTS

99. (1) The expression "charitable trust" includes any trust for the benefit of the public or any section of the public within or without Sri Lanka of any of the following categories :—

Special definitions.

- (a) for the relief of poverty ; or
- (b) for the advancement of education or knowledge ; or
- (c) for the advancement of religion or the maintenance of religious rites and practices ; or
- (d) for any other purposes beneficial or of interest to mankind not falling within the preceding categories.

(2) The expression "adaptation" with reference to a trust means adaptation of the trust in such a manner as to carry out the wishes of the author of the trust as nearly as practicable, according to the doctrine of *cyprès*, where it is not possible to carry out those wishes in the exact manner prescribed by the instrument of trust.

(3) The expression "settlement of a scheme" includes variation of a scheme previously settled.

(4) The expression "place of religious resort" includes the establishments commonly known as "madams" or "chattrams".

General powers of the court.

100. The court shall have the same power for the establishment, regulation, protection, and adaptation of all "charitable trusts" (as defined by this Ordinance) as are exercised for the time being with reference to "charitable trusts" within the meaning of English law by the High Court of Justice in England.

Actions for carrying into effect trusts for public charity.

101. (1) In case of any alleged breach of any express or constructive charitable trust, or whenever the direction of the court is deemed necessary for the administration of any such trust, the Attorney-General acting *ex officio*, or two or more persons having an interest in the trust, and having obtained the consent in writing of the Attorney-General, may institute an action in the court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is held or situate to obtain a decree—

- (a) removing any trustees or trustee of the charity and, if necessary, appointing new trustees thereof ;
- (b) directing accounts and inquiries ;
- (c) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust ;
- (d) authorizing the whole or any part of the trust property to be let, sold, mortgaged, or exchanged ;
- (e) settling a scheme for the management of the trust ;
- (f) granting such further or other relief as the nature of the case may require.

(2) Nothing contained in this or the next succeeding section shall be deemed to preclude the trustee or author of any charitable trust from applying to the court by action or otherwise for such direction or relief as he may be entitled to obtain under the general provisions of this Ordinance, or

for the purpose of invoking the assistance of the court for the better securing of the objects of the trust, or for regulating its administration or the succession to the trusteeship, and upon any such application the court may make such order as it may deem equitable.

(3) For the purpose of any proceeding under this section with respect to any religious trust, regard shall be had to the statutory or other powers belonging to, or customarily exercised by, the authorities of any religious body or society concerned in the administration of the trust.

(4) This section shall not apply to trusts governed by the next succeeding section.

102. (1) Subject to the conditions of subsection (3) hereof, any five persons interested in any place of worship, or in any religious establishment or place of religious resort, or in the performance of the worship or of the service thereof, or in the trusts, express or constructive, relating thereto, may, without joining as plaintiff any of the other persons interested, institute an action in the court within the local limits of whose civil jurisdiction any such place or establishment is situate, or if such place is situate outside Sri Lanka, and the action is instituted with respect to immovable property situate within Sri Lanka, in the court having local jurisdiction, to obtain a decree—

- (a) settling a scheme for the management of the trusts thereof ;
- (b) vesting any property in the trustees ;
- (c) enumerating the properties comprised in the trust, or declaring that any property is trust property comprised in the trust ;
- (d) directing accounts and inquiries ;
- (e) declaring what proportion of the trust property or of any interest therein shall be allocated to any particular object of the trust ;
- (f) declaring any trustee, manager, or superintendent of such place or establishment, or member of any committee of management, guilty of any misfeasance, breach of trust, or neglect of duty ;

Suits by persons interested in religious trusts.

- (g) awarding damages and costs against any such trustee, manager, superintendent, or member of a committee in respect of any such misfeasance, breach of trust, or neglect of duty ;
- (h) directing the removal of any trustee, manager, superintendent, or member of a committee, and, if necessary, directing the appointment of any new trustee, manager, superintendent, or member of a committee ;
- (i) directing the specific performance of any act by any trustee, manager, superintendent, or member of a committee ;
- (j) granting such further or other relief as the nature of the case may require.
- (2) The interest required in order to entitle a person to sue under this section need not be a pecuniary or immediate interest, or such an interest as would entitle the person suing to take any part in the management or superintendence of the trust. Any person who is connected with the trust as donor, or by family or hereditary interests, or who for a period of not less than twelve months has been in the habit of attending at the performance of the worship or services of, or connected with, the place or establishment in question, or of contributing to the general or any special expenses incidental to such worship or services, or of partaking in the benefit of any distribution of alms thereat, or in connection therewith, or of otherwise enjoying the benefit of the trust, shall be deemed to be a person interested within the meaning of this section.
- (3) No action shall be entertained under this section unless the plaintiffs shall have previously presented a petition to the Government Agent of the Administrative District in which such place or establishment is situate praying for the appointment of a commissioner or commissioners to inquire into the subject-matter of the plaint, and unless the Government Agent shall have certified that an inquiry has been held in pursuance of the said petition, and that the commissioner or commissioners (or a majority of them) has reported—
- (a) that the subject-matter of the plaint is one that calls for the consideration of the court ; and
- (b) either that it has not proved possible to bring about an amicable settlement of the questions involved, or that the assistance of the court is required for the purpose of giving effect to any amicable settlement that has been arrived at.
- (4) It shall be the duty of the Government Agent, in any case in which he shall have good reason to believe that the persons presenting such petition or any five of them are persons interested within the meaning of subsection (2) of this section, for which purpose he may require to be satisfied by affidavit or otherwise, to appoint for the purposes of the inquiry a commissioner or commissioners whom he may consider to be a person or persons of acknowledged standing and repute in the general or local religious community concerned ;
- Provided that the Government Agent may appoint himself as the commissioner or as one of the commissioners ;
- Provided further, that the Government Agent may require the petitioners to deposit with him an amount sufficient to cover the reasonable expenses of the commissioner or commissioners in respect of travelling expenses and subsistence incidental to the inquiry prayed for and any such costs certified by the Government Agent to have been properly incurred for the purposes of the inquiry and to have been duly paid shall be deemed to be costs in the action.
- (5) It shall be the duty of any commissioner or commissioners appointed for the purpose of any such inquiry to render a report in terms of subsection (3) hereof within such time as shall be specified for the purpose by the Government Agent, or within such further time as he may from time to time authorize.
- (6) The report shall be filed in the office of the Government Agent, and the petitioners and the trustee shall be entitled, on payment of the usual copying charges, to be furnished with a copy thereof.

(7) The court shall not be precluded from amending the plaint so as to include therein any matter arising in the course of the proceedings by the fact that such matter was not included in the petition to the Government Agent, if it shall be of opinion that in all the circumstances of the case such matter may be equitably included in the action.

(8) This section shall not apply to any Christian religious trust.

Power to refer matter for arbitration or inquiry.

103. In any action instituted under the last preceding section, it shall be lawful for the court—

- (a) on the application of the parties, to order any matter in difference therein to be referred for decision to one or more arbitrators ;
- (b) to appoint a committee for the purpose of making an inquiry and reporting to the court with reference to any matter involved in the action or arising in the course thereof, or for the purpose of assisting the court in the exercise of its powers under the last preceding section, or for the settlement or adjustment of any matter involved in the action or arising in the course thereof.

Powers of commissioners, &c.

104. (1) The following persons, that is to say—

- (a) any commissioner or commissioners appointed under section 102 (4) ;
- (b) any persons directed to make inquiries under section 102 (1) (d) ;
- (c) any arbitrator or committee appointed under section 103,

shall, in addition to any other powers necessary for the effective discharge of the duties imposed upon such persons, have the following powers, that is to say—

- (i) to summon witnesses ;
- (ii) to administer oaths or affirmations ;
- (iii) to require the trustee or any witness summoned for the purpose to give all particulars that may be within his knowledge relating to any immovable property which is or

ought to be comprised in the trust, the offerings received for the purposes of the trust, the expenses incidental to its administration and the manner in which it is conducted.

(2) Any person who, without due excuse, the proof of which shall lie on him, shall make default in complying with any summons authorized under this section, or who shall refuse to answer to the best of his ability any question or inquiry addressed to him under the provisions of this section, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding two hundred rupees.

105. In the exercise of its powers under section 102, without prejudice to its general powers under that section, the court may—

Power of court as to accounts.

- (a) order any trustee of any place or establishment therein mentioned to file accounts for a period not exceeding three years prior to the date of the order ;
- (b) hold or direct an inquiry into the matters complained of or accounts so filed ;
- (c) surcharge and falsify any item in the accounts ;
- (d) require the trustee to make good any defalcation, irregular payment, or deficiency ;
- (e) in any case in which it shall be satisfied that owing to the manner in which the trust incidental to such place or establishment has been conducted in the past it is not possible for the trustee to furnish accounts, require as a condition of the continuance of the trustee in his office that he shall deposit for the purposes of the trust a specified amount not exceeding the amount for which, in the opinion of the court after inquiry into all the circumstances of the case, he may be reasonably held to be responsible in respect of the three years prior to the date of the order ;
- (f) indemnify the trustee on such terms as it may deem equitable in respect of any past neglects, misfeasances, or irregularities ;

(g) direct the manner in which all future accounts shall be kept ;

(h) authorize in any scheme framed under the said section the devotion of a portion of the income of the trust property to the education of children of the religious community interested in the trust, and, if necessary, the utilization of any immovable property comprised in the trust as a site for the said purpose.

Application of religious law.

106. In settling any scheme for the management of any trust under section 102, or in determining any question relating to—

- (a) the constitution or existence of any such trust ;
- (b) the devolution of the trusteeship ;
- (c) the administration of the trust ;

the court shall have regard—

- (i) to the instrument of trust (if any) ;
- (ii) to the religious law and custom of the community concerned ;
- (iii) to the local custom or practice with reference to the particular trust concerned ;

and may have regard to any arrangement *de facto* in force for the purpose of the administration of the trust.

De facto trusts.

107. In dealing with any property alleged to be subject to a charitable trust, the court shall not be debarred from exercising any of its powers by the absence of evidence of the formal constitution of the trust, if it shall be of opinion from all the circumstances of the case that a trust in fact exists, or ought to be deemed to exist.

Special powers of court.

108. In settling any scheme for the management of a charitable trust (without prejudice to its general powers), the court shall have the powers following :—

- (a) to provide for the periodical auditing of the accounts of the trust property by auditors appointed by or subject to the approval of the court, or otherwise as the court may deem expedient ;
- (b) to provide for the visitation of the charity ;

(c) to provide for the settlement of the remuneration of the trustee :

Provided that no such remuneration shall in any case exceed ten *per centum* of the gross income of the trust ;

(d) to devote any surplus income that may be available after the reasonable satisfaction of the objects of the trust to the extension of such objects, or, if the court see fit, to purposes of education.

109. This Chapter shall not apply—

- (a) to religious trusts regulated by the Buddhist Temporalities Ordinance ;
- (b) to religious trusts regulated by the Muslim Mosques and Charitable Trusts or Wakfs Act.

Exclusion of trusts under the Buddhist Temporalities Ordinance and the Muslim Mosques and Charitable Trusts or Wakfs Act.

CHAPTER XI

MISCELLANEOUS

110. (1) No trust shall operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of the constitution of the trust, and the minority of some person who shall be in existence at the expiration of that period and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuities.

(2) If owing to any trust an interest is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of the provisions of this section, such interest fails as regards the whole class.

(3) Where an interest fails by reason of the provisions of this section, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

(4) In any case in which any interest intended to be created fails by reason of the provisions of this section, the court shall have power to give effect to the trust in such a manner as to carry out as nearly as practicable the intentions of the author of the trust, subject to the limits imposed by this section, and may make any order necessary for the purpose.

(5) The restrictions of this section shall not apply to charitable trusts as defined by section 99.

(5) This section shall not apply to constructive trusts, except in so far as such trusts are treated as express trusts by the law of England.

Prescription.

111. (1) In the following cases, that is to say—

(a) in the case of any claim by any beneficiary against a trustee founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy ;

(b) in the case of any claim to recover trust property, or the proceeds thereof still retained by a trustee, or previously received by the trustee and converted to his use ; and

(c) in the case of any claim in the interests of any charitable trust, for the recovery of any property comprised in the trust, or for the assertion of title to such property,

the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance.

(2) Save as aforesaid, all rights and privileges conferred by the Prescription Ordinance shall be enjoyed by a trustee in all actions and legal proceedings in the like manner and to the like extent as they would have been enjoyed if the trustee had not been a trustee :

Provided that in the case of any action or other proceeding by a beneficiary to recover money or other property, the period of prescription shall not begin to run against such beneficiary, unless and until the interest of such beneficiary shall be an interest in possession.

(3) No beneficiary as against whom there would be a good defence by virtue of this section shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded.

(4) Nothing in this section shall preclude the court from giving effect to any application by a trustee for any equitable relief to which he would otherwise be entitled on any ground recognized by the court.

112. (1) In any of the following cases, Vesting orders, namely :—

(i) where it is uncertain in whom the title to any trust property is vested ; or

(ii) where a trustee or any other person in whom the title to trust property is vested has been required in writing to transfer the property by or on behalf of a person entitled to require such transfer, and has wilfully refused or neglected to transfer the property for twenty-eight days after the date of the requirement,

the court may make an order (in this Ordinance called a " vesting order ") vesting the property in any such person in any such manner or to any such extent as the court may direct.

(2) A vesting order under any provision of this Ordinance shall have the same effect as if the trustee or other person in whom the trust property was vested had executed a transfer to the effect intended by the order.

(3) A vesting order under this Ordinance, in so far as it affects immovable property, shall contain the particulars required by section 13 of the Registration of Documents Ordinance, and section 29 of the said Ordinance shall apply to every such order in the same manner as if it were an instrument which affects land :

Provided that no such order in the case of any charitable trust shall be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

(4) Where any trust property comprises any stocks or any shares or securities transferable in any book kept by any company or society, or any shares in any ship registered under the law relating to merchant shipping, a vesting order under this section shall not take effect, so far as it relates thereto, unless and until notice of

such order in writing shall have been given by or on behalf of the person in whom the property is vested under the order to the person or authority in charge of the register or book in which such stocks, shares, or securities, as the case may be, are entered, and upon such notice in writing being given, and on reasonable proof being furnished that such stocks, shares, or securities form part of the said trust property, the person in whom the property is vested under the order shall be entitled to a transfer into his name of any such stocks, shares, or securities, and to the receipt of all dividends, interest, or other sums due, or to become due, in respect of any such stocks, shares, or securities.

(5) In all cases in which a vesting order can be made under this section the court may, if it is more convenient, appoint a person to transfer the property, and a transfer by that person in conformity with the order shall have the same effect as an order under this section, and every person so appointed for the purposes of all transactions, proceedings, and formalities incidental to the said transfer shall have all the powers and capacities of the trustee or other person in whom the trust property was vested, and shall be deemed to be the duly authorized attorney of such trustee or other person for the purposes aforesaid.

113. (1) Where, whether before or after the commencement of this Ordinance, it is declared or intended in any instrument of trust that the trustee of the trust shall be a person for the time being holding or acting in any public office, or holding or acting in any office or discharging any duty in any public or private institution, body, corporation, association, or community, or where any property comes into or is in the possession or ownership of any such person in any of the aforesaid capacities upon any constructive trust, the title to the trust property shall devolve from time to time upon the person for the time being holding or acting in any such office, or discharging such duty, without any conveyance, vesting order, or other assurance otherwise necessary for vesting the property in such person.

(2) Where, whether before or after the commencement of this Ordinance, in the case of any charitable trust, or in the case of

any trust for the purpose of any public or private association (not being an association for the purpose of gain), a method for the appointment of new trustees is prescribed in the instrument of trust (other than nomination in the manner referred to in paragraph (a) of section 75), or by any rule in force, or in the absence of any such prescribed method is established by custom, then upon any new trustee being appointed in accordance with such prescribed or customary method, and upon the execution of the memorandum referred to in the next succeeding subsection, the trust property shall become vested without any conveyance, vesting order, or other assurance in such new trustee and the old continuing trustees jointly, or if there are no old continuing trustees, in such new trustee wholly.

(3) Every appointment under the last preceding subsection shall be made to appear by a memorandum under the hand of the person presiding at the meeting, or other proceeding at which the appointment was made, and attested by two other persons present at the said meeting or proceeding. Every such memorandum shall be notarially executed.

(4) It shall be the duty of the Registrar-General to prepare and maintain special registers of trustees appointed under subsection (2) of this section, and it shall be the duty of every notary before whom any such memorandum is attested to forward to the prescribed officer for the purpose of such registers all such particulars with reference to such memorandum as may be prescribed by rules made under the Notaries Ordinance.

(5) All rules made in pursuance of the last preceding subsection shall apply to notaries who are attorneys-at-law in the same manner as to other notaries, anything in section 36 of the Notaries Ordinance, to the contrary notwithstanding.

114. The Minister may, in his discretion, by Order, on the application of the trustees of any charitable trust or of any public or private association (not being an association for the purposes of gain), authorize the incorporation of the said trustees, and upon the publication of the said Order, the said trustees of the charity or association and

Incorporation of trustees.

Devolution of trust property.

their successors for the time being shall be constituted a corporation under such style and subject to such conditions as may be specified in the Order.

Persons may assign property in trust to themselves and others.

115. Any person shall have power to assign and convey movable and immovable property, now by law assignable, directly to himself and another person, or other persons or corporation, by the like means as he might assign or convey the same to another. And no transfer or assignment of movable or immovable property heretofore made or executed by a person to himself and another person or persons or corporation shall be deemed to be in any manner invalid by reason of its being a transfer or assignment by a person to himself and another person or persons or corporation :

Provided that nothing in this section contained shall give any validity to any assignment or conveyance which would have been heretofore by any law or custom invalid by any other reason than by reason of its being an assignment or conveyance by a person to himself and any other person or persons or corporation.

116. (1) All actions and other Proceedings. proceedings under this Ordinance shall be governed by the enactments and rules relating to civil procedure for the time being in force.

(2) The Judges of the Supreme Court may make rules regulating the procedure to be observed in all proceedings under this Ordinance in respect of all matters for which no provision is made by such enactments and rules, and pending the making of such rules, such procedure shall be followed as shall be directed by the court.

(3) All petitions presented in any court in any proceeding under this Ordinance shall bear a stamp of ten rupees.

117. If the court shall be of opinion, at Costs. the termination of any suit instituted with reference to any trust, that the suit has been for the benefit of the trust, and that no party to the suit ought to be made responsible for the whole of the costs, the court may order the costs of such portion as it may consider just to be paid out of the trust property.