

The Trustee Act

being

Chapter 75 of *The Revised Statutes of Saskatchewan, 1920*
(Assented to November 10, 1920).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

	SHORT TITLE		EFFECT OF VESTING ORDERS ON CHOSSES IN ACTION
1	Short title	22	Effect of vesting order
	INTERPRETATION		TRUSTEES FOR CHARITIES
2	Interpretation	23	Exercise of powers in favour of charities, etc.
	INVESTMENTS	24	Power to order a sale in proper cases
3	Investments by trustees		APPLICATION
4	Investments in terminable debentures in certain companies	25	Who may apply for appointment of new trustee or vesting order, etc.
5	Additional powers given		POWERS OF NEW TRUSTEES
6	When trustee not chargeable for lending on insufficient security	26	Powers of new trustees
7	Trustees lending more than authorised amount	27	Costs of application
8	Liability in case of change of character of investment		PURCHASE AND SALE
	RIGHTS AND LIABILITIES OF TRUSTEES	28	Power of trustee for sale to sell by auction, etc.
9	Every trust instrument deemed to contain clause for the indemnity and reimbursement of the trustees	29	Power to sell subject to depreciatory conditions
10	Court may appoint new trustees	30	Fee simple estates of bare trustees vest in their personal representatives
11	Appointment of new trustees	31	Conveyances by married woman as bare trustee
13	Vesting of trust property in new or continuing trustees without conveyance	32	Receipts of trustees effectual discharges
	VESTING ORDERS AND ORDERS RELEASING CONTINGENT RIGHTS TO LAND		VARIOUS POWERS AND LIABILITIES
14	Vesting orders as to land, where court may make	33	Appointment of agents by trustees for certain purposes
15	Orders as to contingent rights of unborn persons	34	Powers of trustees to insure trust property
16	Order consequential on judgment, for sale or mortgage of land	35	Trustee committing breach of trust at instigation of beneficiary
17	Order consequential on judgment, for specific performance, etc.	36	Power of trustee to give receipts
	EFFECT OF VESTING ORDERS OF LAND	37	Power for executors and trustees to compound, etc.
18	Effect of vesting order	38	Powers of two or more trustees
19	Orders made upon certain allegations are conclusive evidence	39	Exoneration of trustees in respect of certain powers of attorney
	APPOINTMENT OF PERSONS TO CONVEY		MAINTENANCE OF INFANTS
20	Power to appoint persons to convey	40	Application of income of infant's trust property to his support
	VESTING ORDERS AND ORDERS RELEASING CONTINGENT RIGHTS AS TO STOCKS AND CHOSSES IN ACTION	41	Sale of infant's trust property and application of proceeds to his support where income deficient
21	Vesting orders as to stock and choses in action, when court may make	42	Where value of infant's trust property is \$1,500 or under

PAYMENT INTO COURT BY TRUSTEES

- 43 Trust money or securities, how dealt with
- 44 Relief of trustees committing technical breach of trust

RIGHTS AND LIABILITIES OF EXECUTORS
AND ADMINISTRATORS

- 45 Actions by executors and administrators for torts
- 46 Actions against executors and administrators for torts
- 47 Damages in actions under two preceding sections
- 48 Executors or administrators of a lessor may distrain for arrears
- 49 Distraint limited to six months after lease terminates
- 50 Representatives of deceased joint contractors liable although other joint contractors living
- 51 Devisee in trust may raise money by sale or mortgage to satisfy charges notwithstanding no express power in will
- 52 Power given by last section extended to survivors, devisees, etc.
- 53 Purchasers, etc., not bound to inquire as to exercise of powers
- 54 When directions to sell may be exercised by executor
- 55 Administration with will annexed may exercise power of sale given to executor
- 56 Or when no one named in the will to execute powers of sale, etc.
- 57 Executors, etc., may convey in pursuance of a contract for sale made by deceased
- 58 Duties and liabilities of an executor and administrator acting under this Act
- 59 Powers given by this Act to two or more to survive
- 60 In case of deficiency of assets debts to rank *pari passu*
- 61 If claim is rejected and notice given an action must be brought within a certain period

- 62 Liability of executor or administrator as to covenants etc., in leases

- 63 Liability of executor as to rents, etc., in conveyances on rent charges, etc.

SUMMARY APPLICATION TO COURT
FOR ADVICE

- 64 Trustee, etc., may apply for advice in management of trust property

ALLOWANCE TO TRUSTEES, ETC.

- 65 Fair and reasonable allowance
- 66 Allowance made although estate not before court
- 67 Order for executor's trustee's or administrator's allowance
- 68 Where allowance fixed by the instrument
- 69 Profit costs of solicitor

LIMITATION OF ACTIONS

- 70 Application of statutes of limitations to certain actions against trustees

JUDICIAL TRUSTEES

- 71 Appointment of judicial trustees
- 72 No security required from public trustee

CHAPTER 75

An Act respecting Trustees and Executors and the Administration of Estates

SHORT TITLE

Short title

1 This Act may be cited as *The Trustee Act*.

R.S.S. 1909, c.46, s.1; R.S.S. 1920, c.75, s.1.

INTERPRETATION

Interpretation

2 In this Act, unless the context otherwise requires, the expression:

“Trustee”

1. “**Trustee**” shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee and shall also include several joint trustees.

R.S.S. 1909, c.46, s.2; R.S.S. 1920, c.75, s.2.

INVESTMENTS

Investments by trustees

3(1) Trustees, having money in their hands which it is their duty, or which it is in their discretion, to invest at interest, may, subject to the terms of the trust, invest the same in:

- (a) securities which are a first charge upon land in any province of Canada;
- (b) the stock, funds or Government securities of Canada or of any province of Canada, or guaranteed thereby respectively, or the public stock, funds or Government securities of or securities guaranteed by the United Kingdom or the United States of America, or the bonds or debentures of any municipal corporation, school district or drainage district in Saskatchewan, or debentures issued under *The Rural Telephone Act*:

Provided that such investments are in other respects reasonable and proper.

(2) Trustees may from time to time vary or transpose any securities in which money in their hands is invested whether under the authority of this Act or otherwise into or for any other securities of a nature authorised by this Act.

(3) Money already invested in any such stock, debentures or securities as aforesaid shall be held and taken to have been lawfully and properly invested.

1918-19, c.23, s.2; R.S.S. 1920, c.75, s.3.

Investments in terminable debentures in certain companies

4(1) It shall be lawful for a trustee unless expressly forbidden by the instrument, if any, creating the trust to deposit with or to invest any trust funds in his hands in terminable debentures or debenture stock of the hereinafter mentioned societies and companies provided that such deposit or investment is in other respects reasonable and proper and that the debentures are registered and are transferable only on the books of the society or company in his name as the trustee for the particular trust estate for which they are held in such debentures or debenture stock as aforesaid and that the deposit account in the company's ledger is in the name of the trustee for the particular trust estate for which it is held and the deposit, receipt or pass book is not transferable by indorsement or otherwise.

(2) Any incorporated society or company which has been or shall hereafter be authorised by any lawful authority for the purpose of lending money upon mortgages on real estate or for that purpose and other purposes such society or company having a capitalised, fixed, paid up and permanent stock not liable to be withdrawn therefrom amounting to at least \$400,000 and having a reserve fund amounting to not less than 25 per cent. of its paid up capital and its stock having a market value of not less than seven per cent. premium shall be a society or company within the meaning and intent of subsection (1).

(3) The trustees may from time to time vary any such investments.

(4) No deposits or investments shall be made under the authority of this Act with or in the debentures of any such society or company which has not obtained the order of the Lieutenant Governor in Council approving of deposits with or investments in the debentures thereof, and such approval shall not be granted to any society or company which does not appear to have kept strictly within its legal powers in relation to borrowing and investment.

(5) The Lieutenant Governor in Council if he deems it expedient may at any time revoke any order in council previously made approving of deposits with or investments in the debentures or debenture stock of any society or company and such revocation shall not affect the propriety of deposits or investments made before such revocation.

R.S.S. 1909, c.46, s.4; R.S.S. 1920, c.75, s.4.

Additional powers given

5 The powers hereby conferred are in addition to the powers conferred by the instrument, if any, creating the trust:

Provided that nothing herein contained shall authorise any trustee to do anything which he is in express terms forbidden to do or to omit to do anything which he is in express terms directed to do by the instrument creating the trust.

R.S.S. 1909, c.46, s.5; R.S.S. 1920, c.75, s.5.

When trustee not chargeable for lending on insufficient security

6(1) No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere and that the amount of the loan does not exceed two-thirds of the value of the property as stated in the report and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) This section shall apply to a loan upon any property on which the trustee can lawfully lend and to transfers of existing securities as well as to new securities and to investments made as well before as after the passing of this Act.

R.S.S. 1909, c.46, s.6; R.S.S. 1920, c.75, s.6.

Trustees lending more than authorised amount

7 Where a trustee has improperly advanced trust money on a mortgage security which would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced thereon the security shall be deemed an authorised investment for such less sum and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

R.S.S. 1909, c.46, s.7; R.S.S. 1920, c.75, s.7.

Liability in case of change of character of investment

8 No trustee shall be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law.

R.S.S. 1909, c.46, s.8; R.S.S. 1920, c.75, s.8.

RIGHTS AND LIABILITIES OF TRUSTEES

Every trust instrument deemed to contain clause for the indemnity and reimbursement of the trustees

9 Every deed, will or other document creating a trust either expressly or by implication shall without prejudice to the clauses actually contained therein be deemed to contain a clause in the words or to the effect following that is to say: "That the trustees or trustee for the time being of the said deed, will or other instrument shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity and shall be answerable and accountable only for their own acts, receipts, neglects or defaults and not for those of each other nor for any banker, broker or other person with whom any trust moneys or securities may be deposited; nor for the insufficiency or deficiency of any stocks, funds or securities nor for any other loss unless the same shall happen through their own wilful neglect or default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will or other instrument to reimburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument."

R.S.S. 1909, c.46, s.9; R.S.S. 1920, c.75, s.9.

Court may appoint new trustees

10(1) Whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, the Court of King's Bench may make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee; and, in particular, and without prejudice to the generality of the foregoing provision, the court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of an indictable offence, or is insolvent.

(2) An order under subsection (1) and any consequential vesting order or conveyance shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under a power for that purpose contained in an instrument would have operated.

(3) Nothing in this section shall give power to appoint a personal representative.

1918-19, c.23, s.3; R.S.S. 1920, c.75, s.10.

Appointment of new trustees

11(1) Where a trustee either original or substituted and whether appointed by the court or otherwise, dies or desires to be discharged from or refuses or becomes unfit or incapable to act in the trusts or powers in him reposed before the same have been fully discharged and performed it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust, if any, or if there be no such person or no such person able and willing to act then for the surviving or continuing trustees or trustee for the time being or the acting executors or executor or administrators or administrator of the last surviving and continuing trustee or for the last retiring trustee by writing to appoint any other person or persons to be a trustee or trustees in place of the trustee or trustees dying or desiring to be discharged or refusing or becoming unfit or incapable to act as aforesaid; and so often as any new trustee or trustees is or are so appointed as aforesaid all the trust property, if any, which for the time being is vested in the surviving or continuing trustees or trustee or in the heirs, executors or administrators of any trustees or trustee shall with all convenient speed be conveyed, assigned and transferred so that the same may be legally and effectually vested in such new trustee or trustees either solely or jointly with the surviving or continuing trustees or a surviving or continuing trustee as the case may require; and every new trustee to be appointed as aforesaid as well before as after such conveyance, assignment or transfer as aforesaid and also every trustee appointed by the court either before or after the passing of this Act shall have the same powers, authorities and discretions and shall in all respects act as if he had originally been nominated a trustee by the deed, will or other instrument creating the trust.

(2) On the appointment of a new trustee for the whole or any part of trust property:

- (a) the number of trustees may be increased; and
- (b) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property and any existing trustee may be appointed or remain one of such separate set of trustees; or if only one trustee was originally appointed then one separate trustee may be so appointed for any such part of the trust property; and
- (c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and
- (d) any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are the trustees shall be executed or done.

(3) Every new trustee so appointed as well before as after all the trust property becomes by law or by assurance or otherwise vested in him shall have the same powers, authorities and discretions and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(4) 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 provisions of this section.

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

R.S.S. 1909, c.46, s.10; R.S.S. 1920, c.75, s.11.

12(1) Where there are more than two trustees if one of them by deed declares that he is desirous of being discharged from the trust and if his co-trustees and such other person, if any, as is empowered to appoint trustees by deed consent to the discharge of the trustee and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust and shall by the deed be discharged therefrom without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

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

R.S.S. 1909, c.46, s.11; R.S.S. 1920, c.75, s.12.

Vesting of trust property in new or continuing trustees without conveyance

13(1) Where an instrument by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust or in any chattel so subject or the right to recover and receive any debt or other thing in action so subject shall vest in the persons who by virtue of such instrument become and are the trustees for performing the trust that declaration shall without any conveyance or assignment but subject to the provisions of any Act respecting the registration of titles to lands operate to vest in those persons as joint tenants and for the purposes of the trust that estate, interest or right.

(2) Where an instrument by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees that declaration shall without any conveyance or assignment but subject as aforesaid operate to vest in the continuing trustees alone as joint tenants and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This section does not extend to any share, stock, annuity or property only transferable in books kept by a company or other body or in manner prescribed by or under an Act of the Legislature of Saskatchewan,

(4) For the purposes of registration of an instrument the person or persons making the declaration shall be deemed the conveying party or parties and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

R.S.S. 1909, c.46, s.12; R.S.S. 1920, c.75, s.13.

VESTING ORDERS AND ORDERS RELEASING CONTINGENT RIGHTS TO LAND

Vesting orders as to land, where court may make

14(1) In any of the following cases, namely:

- (a) where a trustee either original or substituted is appointed by the court or otherwise; or
- (b) where a trustee dies or desires to be discharged from the trust or refuses or becomes unfit or incapable to act, and the trust property is to be vested in the surviving or continuing trustees; or
- (c) where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is an infant, or is out of Saskatchewan, or cannot be found; or
- (d) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or
- (e) where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or
- (f) where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or
- (g) where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land or to a release of the right, to convey the land or release the right, and has wilfully refused or neglected to convey the land or release the right for fourteen days after the date of the requirement;

the Court of King's Bench may make an order, in this Act called a vesting order, vesting the land in any such person in any such manner, and for any such estate, as the court may direct, or releasing, or disposing of the contingent right to such person as the court may direct.

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

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

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.14.

Orders as to contingent rights of unborn persons

15 Where any land is subject to a contingent right in an unborn person, or a class of unborn persons, who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the Court of King's Bench may make an order releasing the land from the contingent right, or may make an order vesting in any person, the estate to or of which the unborn person or class of unborn persons, would, on coming into existence, be entitled or possessed in the land.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.15.

Order consequential on judgment, for sale or mortgage of land

16 Where any court gives a judgment or makes an order directing the sale of any land every person who is entitled to or possessed of the land or entitled to a contingent right therein as heir, or under the will of a deceased person, for payment of whose debts the judgment was given or order made, and is a party to the action or proceedings in which the judgment or order was given or made, or is otherwise bound by the judgment or order shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act; and the Court of King's Bench may make an order vesting the land, or any part thereof, for such estate as that court thinks fit in the purchaser, or any other person.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.16.

Order consequential on judgment, for specific performance, etc.

17 Where a judgment is given for the specific performance of a contract concerning any land, or for the partition or sale in lieu of partition, or exchange of any land, or generally where any judgment is given for the conveyance of any land, either in cases arising out of the doctrine of election, or otherwise, the Court of King's Bench may declare that any of the parties to the action are trustees of the land, or any part thereof, within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will, or voluntary settlement, of any person deceased, who was during his lifetime a party to the contract or transactions concerning which the judgment was given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act., and thereupon the Court of King's Bench may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.17.

EFFECT OF VESTING ORDERS OF LAND**Effect of vesting order**

18 A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate as the Court of King's Bench directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate as the court directs, and shall in every other case have the same effect as if the trustee, or other person, or description or class of persons, to whose rights or supposed rights such provisions relate, had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.18.

Orders made upon certain allegations are conclusive evidence

19 Where a vesting order is made as to any land under this Act, founded on an allegation of the personal incapacity of a trustee, or on an allegation that a trustee is out of Saskatchewan or cannot be found, or that it is uncertain which of the several trustees was the survivor, or on an allegation that any trustee has died intestate without an heir, or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the Court of King's Bench from directing a conveyance on the payment of costs occasioned by any such order if improperly obtained.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.19.

APPOINTMENT OF PERSONS TO CONVEY**Power to appoint persons to convey**

20 Where a vesting order may be made under any of the foregoing provisions the Court of King's Bench may, if it is more convenient, by order appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.20.

VESTING ORDERS AND ORDERS RELEASING CONTINGENT RIGHTS AS TO STOCKS AND CHOSSES IN ACTION**Vesting orders as to stock and choses in action, when court may make**

21(1) In any of the following cases:

- (a) where the Court of King's Bench appoints, or has appointed, a new trustee; or
- (b) where a trustee entitled alone, or jointly with another person, to stock, or to a chose in action:
 - (i) is an infant; or
 - (ii) is out of Saskatchewan; or
 - (iii) cannot be found; or
 - (iv) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled; or
 - (v) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action for fourteen days next after an order of the Court of King's Bench for that purpose has been served on him; or

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

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

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

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

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

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

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

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

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

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.21.

EFFECT OF VESTING ORDERS ON CHOSSES IN ACTION

Effect of vesting order

22 Where any order has been made under the provisions of this Act by the Court of King's Bench vesting the legal right to sue for or recover any chose in action, or any interest in respect thereof, in any person, he may carry on, commence and prosecute in his own name any action or proceeding for the recovery of such chose in action in the same manner and with the same rights as the person in whose place he has been appointed.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.22.

TRUSTEES FOR CHARITIES

Exercise of powers in favour of charities, etc.

23 The Court of King's Bench may exercise the powers herein conferred for the purpose of vesting any land or personal estate in the trustee of any charity or society over which the court would have jurisdiction upon action duly instituted.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.23.

Power to order a sale in proper cases

24(1) Where land is held by trustees for a charitable purpose and it is made to appear that the land can be no longer advantageously used for such charitable purpose or that for any other reason the land ought to be sold, a judge of the Court of King's Bench may make an order authorising the sale thereof and may give such directions in relation thereto and for securing the due investment and application of the money arising from the sale as may be deemed proper.

(2) No such order shall be made unless and until notice of the application has been given to the Attorney General of Saskatchewan.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.24.

APPLICATION**Who may apply for appointment of new trustee or vesting order, etc.**

25(1) An order under this Act for the appointment of a new trustee, or concerning any land or personal estate, subject to a trust, may be made upon the application of any person beneficially interested therein, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

(2) Any person entitled may apply, upon notice to such persons as the court or judge may think proper, for such an order as he may deem himself entitled to.

(3) Upon the hearing of the application the court may direct a reference to inquire into any facts which require investigation, or may direct the application to stand over to enable further evidence to be adduced or further notice to be served.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.25.

POWERS OF NEW TRUSTEES**Powers of new trustees**

26 Every trustee appointed by the court shall, as well before as after the trust property becomes by law or by assurance or otherwise vested in him, have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.26.

Costs of application

27 The court may order the costs and expenses incident to any application for an order appointing a new trustee or for a vesting order, or of and incident to any such order or any conveyance or transfer in pursuance thereof, to be paid out of the land or personal estate in respect whereof the same is made or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

1918-19, c.23, s.4; R.S.S. 1920, c.75, s.27.

PURCHASE AND SALE

Power of trustee for sale to sell by auction, etc.

28(1) Subject to the provisions of *The Devolution Estates Act*, where a trust for sale or a power of sale of property is vested in a trustee he may sell or concur with any other person in selling all or any part of the property either subject to prior charges or not and either together or in lots, by public auction or by private contract subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit with power to vary any contract for sale and to buy in at any auction or to rescind any contract for sale and to resell without being answerable for any loss.

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

R.S.S. 1909, c.46, s.13; 1918-19, c.23, s.5; R.S.S. 1920, c.75, s.28.

Power to sell subject to depreciatory conditions

29(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall after the execution of the conveyance be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser upon any sale made by a trustee shall be at liberty to make any objection against the title upon the ground aforesaid.

R.S.S. 1909, c.46, s.14; R.S.S. 1920, c.75, s.29.

Fee simple estates of bare trustees vest in their personal representatives

30 Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seized in fee simple such hereditaments shall vest in the legal personal representative from time to time of such trustee.

R.S.S. 1909, c.46, s.15; R.S.S. 1920, c.75, s.30.

Conveyances by married woman as bare trustee

31 Where any freehold hereditament is vested in a married woman as bare trustee she may convey or surrender the same as if she were a *feme sole* and without her husband joining in the conveyance.

R.S.S. 1909, c.46, s.16; R.S.S. 1920, c.75, s.31.

Receipts of trustees effectual discharges

32 The *bona fide* payment of any money to and the receipt thereof by any person to whom the same is payable upon any express or implied trust or for any limited purpose shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust.

1918-19, c.23, s.6; R.S.S. 1920, c.75, s.32.

VARIOUS POWERS AND LIABILITIES

Appointment of agents by trustees for certain purposes

33(1) It shall be lawful for a trustee to appoint a solicitor to be his agent to receive and give a discharge for any money or any valuable consideration of property receivable by such trustee under the trust; and no trustee shall be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this section had not been enacted in case of permitting such money, valuable consideration or property to remain in the hands or under the control of the solicitor for a period longer than is reasonably necessary to enable the solicitor to pay or transfer the same to the trustee.

(2) It shall be lawful for a trustee to appoint a chartered bank or solicitor to be his agent to receive and give a discharge for any money payable to such trustee under or by virtue of a policy of assurance or otherwise; and no trustee shall be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this section had not been enacted in case he permits such money to remain in the hands or under the control of the solicitor for a period longer than is reasonably necessary to enable him to pay the same to the trustee.

R.S.S. 1909, c.46, s.18; R.S.S. 1920, c.75, s.33.

Powers of trustees to insure trust property

34(1) It shall be lawful for but not obligatory upon a trustee to insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three fourth parts of the full value of such building or property and to pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person entitled wholly or partly to such income.

(2) This section shall not apply to any building or property which a trustee is bound forthwith to convey absolutely to any *cestui que trust* upon being requested to do so.

R.S.S. 1909, c.46, s.19; R.S.S. 1920, c.75, s.34.

Trustee committing breach of trust at instigation of beneficiary

35 Where a trustee has committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary the court may if it thinks fit and notwithstanding that the beneficiary is a married woman entitled for her separate use whether with or without a restraint upon anticipation make such order as to the court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

R.S.S. 1909, c.46, s.20; R.S.S. 1920, c.75, s.35.

Power of trustee to give receipts

36 The receipt in writing of any trustee for any money, securities or other personal property or effects payable, transferable or deliverable to him under any trust or power shall be a sufficient discharge for the same and shall effectually exonerate the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

R.S.S. 1909, c.46, s.21; R.S.S. 1920, c.75, s.36.

Power for executors and trustees to compound, etc.

37(1) A trustee or two or more trustees acting together or a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorised to execute the trusts and powers thereof may if and as he or they may think fit accept any composition or any security real or personal for any debt or for any property real or personal claimed and may allow any time for payment for any debt and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating, to the testator's or intestate's estate or to the trust and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

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

R.S.S. 1909, c.46, s.22; R.S.S. 1920, c.75, s.37.

Powers of two or more trustees

38 Where a power or trust is given to or vested in two or more trustees jointly then unless the contrary is expressed in the instrument, if any, creating the power or trust the same may be exercised or performed by the survivor or survivors of them for the time being.

R.S.S. 1909, c.46, s.23; R.S.S. 1920, c.75, s.38.

Exoneration of trustees in respect of certain powers of attorney

39(1) A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power if this fact was not known to the trustee at the time of his so acting or paying.

(2) Nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made and the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

R.S.S. 1909, c.46, s.24; R.S.S. 1920, c.75, s.39.

MAINTENANCE OF INFANTS

Application of income of infant's trust property to his support

40 In all cases where any property is held by trustees in trust for an infant either absolutely or contingently on his attaining the age of twenty-one years or on the occurrence of any event previously to his attaining that age it shall be lawful for such trustees at their sole discretion to pay to the guardians, if any, of such infant or otherwise to apply for or towards the maintenance or education of such infant the whole or any part of the income to which such infant may be entitled in respect of such property whether there be any fund applicable to the same purpose or any other person bound by law to provide for such maintenance or education or not; and such trustees shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in proper securities for the benefit of the person who shall ultimately become entitled to the property from which such accumulation shall have arisen:

Provided always that it shall be lawful for such trustees at any time if it appears to them expedient to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

R.S.S. 1909, c.46, s.25; R.S.S. 1920, c.75, s.40.

Sale of infant's trust property and application of proceeds to his support where income deficient

41 In all cases where any property either real or personal is held by trustees in trust for an infant either absolutely or contingently on his attaining the age of twenty-one years or on the occurrence of any event previously to his attaining that age and where the income arising from such property is insufficient for the maintenance and education of such infant it shall be lawful for such trustees by leave of a judge of the Court of King's Bench to be obtained in a summary manner to sell and dispose of any portion of such real or personal property and to pay to the guardians, if any, of such infant or otherwise to apply for or towards the maintenance or education of such infant the whole or any part of the money arising from such sale as aforesaid; and in the event of the whole of the money arising from any sale of the real or personal property as aforesaid not being immediately required for the maintenance and education of such infant then the said trustees shall invest the surplus moneys and the resulting income therefrom from time to time in proper securities and shall apply such moneys and the proceeds thereof from time to time for the education and maintenance of the said infant and shall hold all the residue of the moneys and interest thereon not required for the education and maintenance of such infant as aforesaid for the benefit of the person who shall ultimately become entitled to the property from which such moneys and interest have arisen.

R.S.S. 1909, c.46, s.26; R.S.S. 1920, c.75, s.41.

Where value of infant's trust property is \$1,500 or under

42 In all cases where all the real and personal property belonging to or held in trust for an infant does not exceed in value \$1,500, the Official Guardian may authorise such trustee or the guardian of the said infant without any court order in that behalf, to sell and dispose of any portions of such real and personal property, and to apply the whole or any part of the proceeds thereof for the maintenance and education of such infant, provided always that the amount so to be authorised shall not exceed \$10 per month.

1917 (sess. 2.), c.21, s.1; R.S.S. 1920, c.75, s.42.

PAYMENT INTO COURT BY TRUSTEES

Trust money or securities, how dealt with

43(1) Trustees or the majority of trustees having in their hands or under their control money or securities belonging to a trust or to the estate of a deceased person may pay the same into the Court of King's Bench; and the same shall subject to the rules of court be dealt with according to the orders of the Court of King's Bench.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where any moneys or securities are vested in any persons as trustees and the majority are desirous of paying the same into court but the concurrence of the other or others cannot be obtained the Court of King's Bench may order the payment into Court to be made by the majority without the concurrence of the other or others and where any such moneys or securities are deposited with any banker, broker or other depositary the court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court and every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid or delivered.

R.S.S. 1909, c.46, s.28; R.S.S. 1920, c.75, s.43.

Relief of trustees committing technical breach of trust

44 If in any proceeding affecting trustees or trust property it appears to the court that a trustee whether appointed by the court or by an instrument in writing or otherwise or that any person who in law may be held to be fiduciarily responsible as a trustee is or may be personally liable for any breach 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.

R.S.S. 1909, c.46, s.29; R.S.S. 1920, c.75, s.44.

RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS

Actions by executors and administrators for torts

45(1) The executors or administrators of any deceased person may maintain an action for all torts or injuries to the person not resulting in death, except libel and slander, or to the real and personal estate of the deceased, in the same manner as the deceased might have done if living.

(2) In every such action the judge or jury may give such damages as he or they think proportioned to the loss sustained by the estate of the deceased in consequence of wrong committed.

(3) Every such action shall be brought within one year after the death of the deceased.

R.S.S. 1909, c.46, s.30 (redrawn); R.S.S. 1920, c.75, s.45.

Actions against executors and administrators for torts

46 In case any deceased person committed a wrong to another in respect of his person or of his real or personal property except in cases of libel and slander the person so wronged may maintain an action against the executors or administrators of the person who committed the wrong; but such action shall be brought within one year after the decease.

R.S.S. 1909, c.46, s.31; R.S.S. 1920, c.75, s.46.

Damages in actions under two preceding sections

47 In estimating the damages in any action under either of sections 45 and 46 the benefit, gain, profit or advantage which in consequence of or resulting from the wrong committed may have accrued to the estate of the person who committed the wrong shall be taken into consideration and shall form part or may constitute the whole of the damages to be recovered and whether or not any property or the proceeds or value of property belonging to the person bringing the action or to his estate has or have been appropriated by or added to the estate or moneys of the person who committed the wrong.

R.S.S. 1909, c.46, s.32; R.S.S. 1920, c.75, s.47.

Executors or administrators of a lessor may distrain for arrears

48 The executors or administrators of any lessor may distrain upon the lands demised any term or at will for the arrears of rent due to such lessor in his lifetime in like manner as such lessor might have done if living.

R.S.S. 1909, c.46, s.33; R.S.S. 1920, c.75, s.48.

Distrain limited to six months after lease terminates

49 Such arrears may be distrained for at any time within six months after the determination of the term or lease and during the continuance of the possession of the tenant from whom the arrears became due; and the law relating to distresses for rent shall be applicable to the distresses so made as aforesaid.

R.S.S. 1909, c.46, s.34; R.S.S. 1920, c.75, s.49.

Representatives of deceased joint contractors liable although other joint contractors living

50 In case any one or more joint contractors, obligors or partners die the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners may proceed by action against the representatives of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several and this notwithstanding there may be another person liable under such contract, obligation or promise still living and an action pending against such person; but the property and effects of stockholders in chartered banks or the members of other incorporated companies shall not be liable to a greater extent than they would have been if this section had not been passed.

R.S.S. 1909, c.46, s.35; R.S.S. 1920, c.75, s.50.

Devisee in trust may raise money by sale or mortgage to satisfy charges notwithstanding no express power in will

51 Subject to the provisions of *The Devolution of Estates Act* where by any will a testator charges his real estate or any specific portion thereof with the payment of his debts or with the payment of any legacy or other specific sum of money and devises the estate so charged to any trustee or trustees for the whole of his estate or interest therein and does not make any express provision for the raising of such debt, legacy or sum of money out of such estate the said trustee or trustees notwithstanding any trusts actually declared by the testator may raise such debt, legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said real estate or any part thereof or by a mortgage of the same or partly in one mode and partly in the other and a mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same think proper.

R.S.S. 1909 c.46, s.36; R.S.S. 1920, c.75, s.51.

Power given by last section extended to survivors, devisees, etc.

52 The powers conferred by section 51 shall extend to all and every the person or persons in whom the estate devised is for the time being vested by survivorship, descent or devise or to any person or persons appointed under any power in the will or by the Court of King's Bench to succeed to the trusts created by the will as aforesaid.

R.S.S. 1909, c.46, s.37; R.S.S. 1920, c.75, s.52.

Purchasers, etc., not bound to inquire as to exercise of powers

53 Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections 51 and 52, or any of them, have been duly and correctly exercised by the person or persons acting in virtue thereof.

R.S.S. 1909, c.46, s.38; R.S.S. 1920, c.75, s.53.

When directions to sell may be exercised by executor

54 Where there is in any will or codicil of any deceased person any direction whether express or implied to sell, dispose of, appoint, mortgage, incumber or lease any real estate and no person is by the said will or some codicil thereto or otherwise by the testator appointed to execute and carry the same into effect the executor or executors, if any, named in such will or codicil, subject to the provisions of *The Devolution of Estates Act*, shall and may execute and carry into effect every such direction to sell, dispose of, appoint, incumber or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect as if the executor or executors of the testator were appointed by the testator to execute and carry the same into effect.

R.S.S. 1909, c.46, s.39; R.S.S. 1920, c.75, s.54.

Administration with will annexed may exercise power of sale given to executor

55 Where there is in any will or codicil thereto of any deceased person any power to any executor or executors in such will to sell, dispose of, appoint, mortgage, incumber or lease any real estate or any estate or interest therein whether such power is express or arises by implication and where from any cause letters of administration with such will annexed have been by a court of competent jurisdiction in Saskatchewan committed to any person and such person has given the required security such person shall and may, subject to the provisions of *The Devolution of Estates Act*, exercise every such power and sell, dispose of, appoint, mortgage, incumber or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect for all purposes as the said executor or executors might have done.

R.S.S. 1909, c.46, s.40; R.S.S. 1920, c.75, s.55.

Or when no one named in the will to execute powers of sale, etc.

56 Where there is in any will or codicil thereto of any deceased person any power to sell, dispose of, appoint, mortgage, incumber or lease any real estate or any estate or interest therein whether such power is express or arises by implication and no person is by the said will or some codicil thereto or otherwise by the testator appointed to execute such power and letters of administration with such will annexed have been by a court of competent jurisdiction in Saskatchewan committed to any person and such person has given the required security before mentioned such person shall and may exercise every such power and sell, dispose of, appoint, mortgage, incumber or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect as if such last named person had been appointed by the testator to execute such power.

R.S.S. 1909, c.46, s.41; R.S.S. 1920, c.75, s.56.

Executors, etc., may convey in pursuance of a contract for sale made by deceased

57 Where any person has entered into a contract in writing for the sale and conveyance of real estate or any estate or interest therein and such person has died intestate or without providing by will for the conveyance of such real estate or estate or interest therein to the person entitled or to become entitled to such conveyance under such contract then if the deceased would be liable to execute a conveyance were he alive the executor, administrator or administrator with the will annexed, as the case may be, of such deceased person shall make and give to the person entitled to the same a good and sufficient conveyance or conveyances of such estates and of such nature as the said deceased if living would be liable to give and such conveyances shall be as valid and effectual as if the deceased were alive at the time of the making thereof and had executed the same but shall not have any further validity.

R.S.S. 1909, c.46, s.42; R.S.S. 1920, c.75, s.57.

Duties and liabilities of an executor and administrator acting under this Act

58 Every executor, administrator and administrator with the will annexed shall as respects the additional powers vested in him by this Act and any money or assets by him received in consequence of the exercise of such powers be subject to all the liabilities and compellable to discharge all the duties of whatsoever kind which as respects the acts to be done by him under such powers would have been imposed upon an executor or other person appointed by the testator to execute the same or in case of there being no such executor or person would have been imposed by law or by any court or judge of competent jurisdiction in Saskatchewan.

R.S.S. 1909, c.46, s.43; R.S.S. 1920, c.75, s.58.

Powers given by this Act to two or more to survive

59 Where there are several executors, administrators or administrators with the will annexed and one or more of them die the powers hereby created shall vest in the survivor or survivors.

R.S.S. 1909, c.46, s.44; R.S.S. 1920, c.75, s.59.

In case of deficiency of assets debts to rank *pari passu*

60 On the administration of the estate of a deceased person in case of the deficiency of assets, debts due to the Crown and to the executor or administrator of the deceased person and debts to others including therein respectively debts by judgment or order and other debts of record, debts by specialty, simple contract debts and such claims for damages as by statute are payable in like order of administration as simple contract debts shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein contained shall prejudice any lien or charge existing during the lifetime of the debtor on any of his real or personal estate.

R.S.S. 1909, c.46, s.45; R.S.S. 1920, c.75, s.60.

If claim is rejected and notice given an action must be brought within a certain period

61(1) In case the executor or administrator gives notice in writing referring to this section of his intention to avail himself thereof to any creditor or other person of whose claims against the estate he has notice or to the solicitor or agent of such creditor or other person that he the executor or administrator rejects or disputes the claim it shall be the duty of the claimant to commence his action in respect of the claim within six months after the notice is given in case the debt or some part thereof is due at the time of the notice or within three months from the time the debt or some part thereof falls due if no part thereof is due at the time of the notice and in default the claim shall be forever barred.

(2) Unless such creditor or other person within ten days after the receipt of such notice notifies the executor or administrator that he withdraws his claim such executor or administrator may if he thinks fit apply to a judge of the Court of King's Bench for an originating summons calling upon such creditor or other person to establish his claim and upon the return of such summons the judge may allow or bar the claim or make such other order as to him may seem meet with or without costs against either party.

R.S.S. 1909, c.46, s.46; R.S.S. 1920, c.75, s.61.

Liability of executor or administrator as to covenants etc., in leases

62 Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered has satisfied all such liabilities under the said lease or agreement for a lease as have accrued due and been claimed up to the time of the assignment hereinafter mentioned and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised although the period for laying out the same may not have arrived and has assigned the lease or agreement for the lease to a purchaser thereof he shall be at liberty to distribute the residuary estate of the deceased to and among the parties entitled thereto respectively without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not after having assigned the said lease or agreement for a lease and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

R.S.S. 1909, c.46, s.47; R.S.S. 1920, c.75, s.62.

Liability of executor as to rents, etc., in conveyances on rent charges, etc.

63 In like manner where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance or rent-charge whether any such rent be by limitation of use, grant or reservation or agreement for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered has satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed or agreed to be conveyed although the period for laying out the same may not have arrived and has conveyed such property or assigned the said agreement for such conveyance as aforesaid to a purchaser thereof he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not after having made or executed such conveyance or assignment and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

R.S.S. 1909, c.46, s.48; R.S.S. 1920, c.75, s.63.

SUMMARY APPLICATION TO COURT FOR ADVICE

Trustee, etc., may apply for advice in management of trust property

64(1) Any trustee, guardian, executor or administrator shall be at liberty without the institution of an action to apply in court or in chambers in the manner prescribed by rules of court for the opinion, advice or direction of a judge of the Court of King's Bench on any question respecting the management or administration of the trust property or the assets of a testator or intestate.

(2) The trustee, guardian, executor or administrator acting upon the opinion, advice or direction given by the judge shall be deemed so far as regards his own responsibility to have discharged his duty as such trustee, guardian, executor or administrator in the subject matter of the said application; but this provision shall not extend to indemnify a trustee, executor or administrator in respect of any act done in accordance with such opinion, advice or direction as aforesaid if the trustee, executor or administrator has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction.

R.S.S. 1909, c.46, s.49; R.S.S. 1920, c.75, s.64.

ALLOWANCE TO TRUSTEES, ETC.

Fair and reasonable allowance

65 Any trustee under a deed, settlement or will, any executor or administrator, any guardian appointed by any court and any testamentary guardian or other trustee howsoever the trust is created shall be entitled to such fair and reasonable allowance for his care, pains and trouble and his time expended in and about the trust estate as may be allowed by the Court of King's Bench or a judge thereof or by any officer thereof to whom the matter may be referred.

R.S.S. 1909, c.46, s.50; R.S.S. 1920, c.75, s.65.

Allowance made although estate not before court

66 A judge of the Court of King's Bench may on application to him for the purpose settle the amount of such compensation although the trust estate is not before the court in any action.

R.S.S. 1909, c.46, s.51; R.S.S. 1920, c.75, s.66.

Order for executor's trustee's or administrator's allowance

67 The judge of a surrogate court may allow to the executor or trustee or administrator acting under a will or letters of administration a fair and reasonable allowance for his care, pains and trouble and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under the will or letters of administration and in administering, disposing of and arranging and settling the same and generally in arranging and settling the affairs of the estate and may make an order or orders from time to time therefor and the same shall be allowed to an executor, trustee or administrator in passing his accounts.

R.S.S. 1909, c.46, s.53; R.S.S. 1920, c.75, s.67.

Where allowance fixed by the instrument

68 Nothing in sections 65, 66 and 67 shall apply to any case in which the allowance is fixed by the instrument creating the trust.

R.S.S. 1909, c.46, s.54; R.S.S. 1920, c.75, s.68.

Profit costs of solicitor

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

1918-19, c.23, s.7; R.S.S. 1920, c.75, s.69.

LIMITATION OF ACTIONS**Application of statutes of limitations to certain actions against trustees**

70(1) In any action or other proceeding against a trustee or any person claiming through him except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy or is to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his use the following provisions shall apply:

(a) the law relating to the limitation of actions shall apply in the like manner and to the like extent as it would in such action or other proceeding if the trustee or person claiming through him had not been a trustee or a person claiming through a trustee;

(b) if the action or other proceeding is brought to recover money or other property and is one to which no law relating to the limitation of actions applies the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use whether with or without restraint upon anticipation but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

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

(3) This section shall not deprive any executor or administrator of any right or defence to which he is entitled under any law relating to limitation of actions.

R.S.S. 1909, c.46, s.56; R.S.S. 1920, c.75, s.70.

JUDICIAL TRUSTEES

Appointment of judicial trustees

71(1) Where application is made to the Court of King's Bench or a judge thereof by or on behalf of the person creating or intending to create a trust or by or on behalf of a trustee or beneficiary the court or judge may in its or his discretion appoint a person (in this Act called a judicial trustee) to be a trustee of said trust either jointly with any other person or as sole trustee and if sufficient cause is shown in place of all or any existing trustees.

(2) The administration of the property of a deceased person whether a testator or intestate shall be a trust and the executor or administrator a trustee within the meaning of this section.

(3) Any fit and proper person nominated for the purpose an the application may be appointed a judicial trustee and in the absence of such nomination or if the court or judge is not satisfied of the fitness of a person so nominated an official of the court or other competent person may be appointed and in any case a judicial trustee shall be subject to the control and supervision of the court as an officer thereof.

(4) The court or judge may either on request or without request give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5) There may be paid to a judicial trustee out of the trust property such remuneration not exceeding the prescribed limits as the court or judge may assign in each case and the remuneration so assigned to any judicial trustee shall save as the court or judge may for special reasons otherwise order cover all his work and personal outlay.

(6) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited and a report thereon made to the court by the prescribed persons and in any case where the court or judge shall so direct an inquiry into the administration by a judicial trustee of any trust or into any dealing or transaction of a judicial trustee shall be made in the prescribed manner.

R.S.S. 1909, c.46, s.57; R.S.S. 1920, c.75, s.71.

No security required from public trustee

72 Where any bond or security would be required from a private person upon a grant to him of administration or upon his appointment to act in any capacity the public trustee appointed under the Act of the Imperial Parliament of Edward VII chapter 55 shall not be required to give such bond or security on being appointed to act in such capacity as aforesaid but shall be subject to the same liabilities and duties as if he had given such bond or security.

1913, c.67, s.7; R.S.S. 1920, c.75, s.72.